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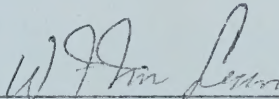


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THE REPORT OF AN INQUIRY
MADE INTO MATTERS CONCERNING
ESTABLISHMENT, OPERATION AND FAILURE OF
THE COSMOPOLITAN LIFE ASSURANCE COMPANY AND
PAP HOLDINGS LTD.

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On behalf of the Chairman and Members of the Executive Council of Alberta, I hereby acknowledge receipt of the Report of His Honour Judge R. P. Kerans of the Matter of the Inquiry made by him pursuant to Order-in-Council 1157/73 and a transcript of the evidence of the public hearing in that connection and the exhibits in the course of the said Inquiry, except Exhibits 47 to 65, inclusive, which I understand are in the possession either of the Royal Canadian Mounted Police or the Clerk of the Provincial Court at Edmonton.



Deputy Attorney-General,
Government of the Province
of Alberta.

July 9 , 1974.

THE REPORT OF AN INQUIRY

MADE INTO MATTERS CONCERNING

ESTABLISHMENT, OPERATION AND FAILURE OF

THE COSMOPOLITAN LIFE ASSURANCE COMPANY AND

PAP HOLDINGS LTD.



IN THE MATTER OF THE PUBLIC INQUIRIES ACT

403/ 425-1320

and The Cosmopolitan Life Assurance Company and
PAP Holdings Ltd.

Madison Building

9919 - 105 Street

Edmonton, Alberta, Canada T5K 2E8

Judge R. P. Kerans, Commissioner

J. C. Major, Esq., Counsel

D. S. Ross, Esq., Secretary

July 9, 1974

Chairman and Members,
Executive Council of Alberta,
Government of the Province of Alberta,
Legislative Building,
EDMONTON, Alberta.

Gentlemen:

Pursuant to Section II of the Public Inquiries Act, the Lieutenant-Governor-in-Council appointed me by Order-in-Council 1157/73 to inquire into certain matters therein stated and report thereon.

I am pleased to enclose herewith my report.

Yours sincerely,

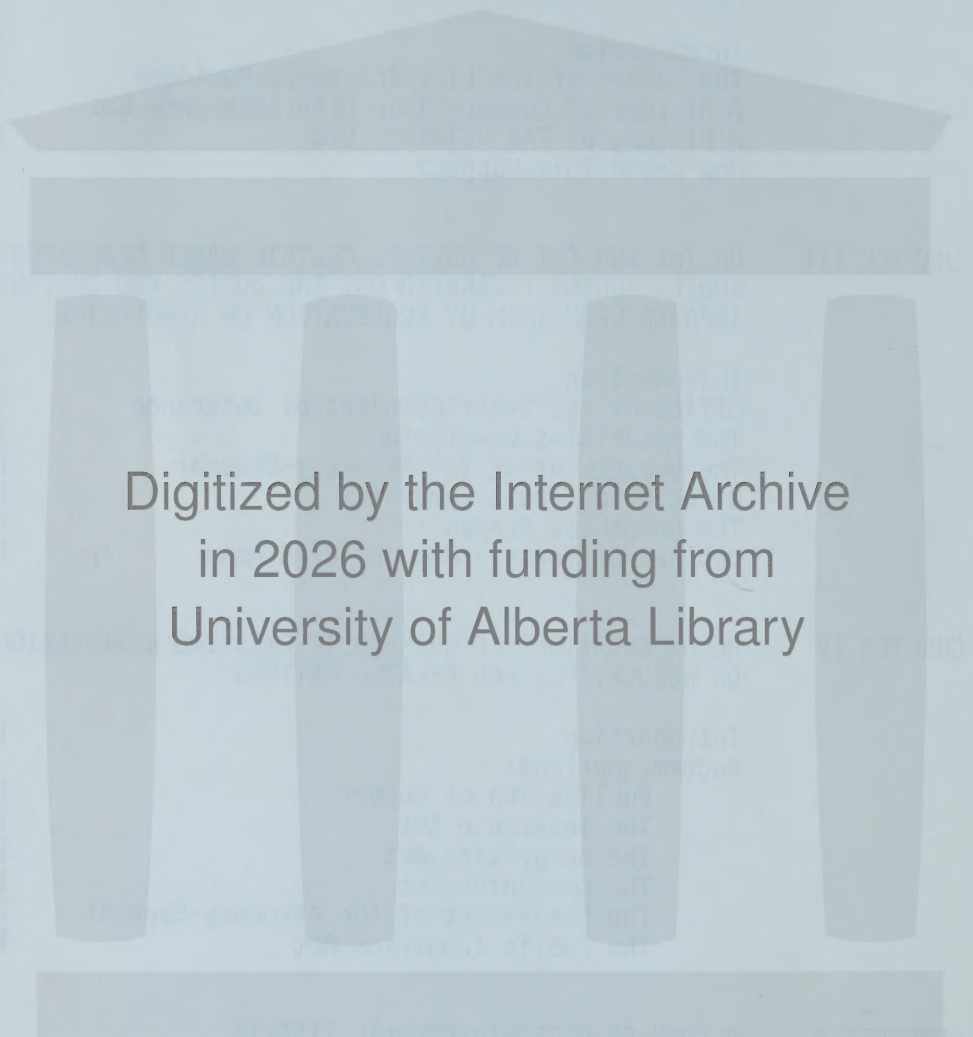
R. P. Kerans,
District Court Judge.

RPK/iws
Encl.

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CHAPTER I

INTRODUCTION

CHAPTER I - INTRODUCTION

Terms of Reference

- A. The Failure of The Cosmopolitan Life Assurance Company and PAP Holdings Ltd.

It was my interpretation of the terms of reference, that, in addition to an Inquiry into the conduct of their duties by those public officers who were in any way involved with the affairs of the companies under study, I was also to attempt to determine and report on "the reasons for the financial failure of The Cosmopolitan Life Assurance Company and PAP Holdings Ltd."

The difficulty in reporting on such a question is that, of necessity, many factors both positive and negative, can cause the failure of a business enterprise. In my opinion, it would be fruitless to engage in undue speculation on negative factors, i.e., on what might have happened to prevent a failure, but did *not* happen. I have decided that the best way to explain the failure of these companies is to give a history of them and their activities. In the course of this history the reasons for ultimate failure become largely self-evident.

As it is my impression from the evidence before me as to the circumstances prior to the calling of this Inquiry that the public concern which gave rise to the Inquiry arose, in part, out of a confusion as to what exactly did happen to these companies, I have concluded that such a history would serve better to satisfy public concern than any other approach. I have so cast this history that it is, hopefully, readily understandable

to the lay reader and, it will be noted, I have made a recommendation about its circulation.

This history also provides the necessary context for a commentary upon the activity of public officers.

B. The Extent of the Inquiry

I have, therefore, inquired into the affairs of these companies only to the extent necessary to obtain the required history. I specifically have not understood that I was charged to inquire into the location of assets of the company, the activities of the liquidator of Cosmopolitan Life Assurance Company, or any private disputes and criminal activities. To the extent that the Inquiry touched upon these matters, it touched upon them only to establish the required history.

More specifically, it became apparent during the course of the Inquiry that there were and are a large number of private disputes arising out of the business activities of the companies. These include disputes between the companies and policyholders, disputes between the companies and shareholders or other investors, disputes between the companies and creditors, disputes among shareholders, disputes between shareholders and other persons, firms or corporations with whom they had personal dealings by reason of their involvement in these companies, and lastly disputes between these companies and other firms, persons or corporations with whom they had business dealings. In my opinion, such disputes are not the proper subject of a public

inquiry but may be resolved by resort to ordinary judicial process. I have, therefore, limited my inquiry into these questions only to the extent necessary to understand the affairs of the company so as to report. I have attempted wherever possible to avoid further comment on these disputes, as they are or may be the subject of litigation.

However, by reason of these many disputes, various accusations were made by various persons against others during the course of this Inquiry. It is inevitable, in the case of a public inquiry, that the reputation of certain persons be under suspicion or under attack. In conducting this Inquiry I have considered myself well guided by the recommendation of the Royal Commission on Tribunals of Inquiry (1966) in England (commonly referred to as the Salmon Report). One recommendation of that report is that:

"Tribunals give particular emphasis in their report to cases where allegations against witnesses or interested persons are shown to be unfounded (page 47)."

C. Unfounded Accusations

Thus, without attempting to interfere with the ultimate resolution of any litigation and, subject to my comments under the next succeeding heading, I feel it is appropriate for me to comment about those allegations made before me against "witnesses or interested persons," which, on the basis of the evidence before me, are in my opinion unfounded.

1. Most of these relate to accusations made by officers

of the failed companies blaming failure on fraudulent behaviour or contractual default on the part of other businesses, firms or corporations with whom they dealt. Such allegations were made against Allarco Developments Company Ltd., the Northwest Trust Company, The Canadian Imperial Bank of Commerce, Columbia Beneficial Holdings Ltd., N.W.L. Financial Corporation Ltd., Seaboard Life Insurance Co. Ltd., and the Royal Bank of Canada and certain officers of these companies. On the basis of the evidence before me, these allegations are unfounded.

2. In the course of evidence before me allegations were made against two solicitors, Mr. David Huberman and Mr. Allan Wachowich.

In the case of Mr. Huberman, I did not find those witnesses who alleged improprieties against him to be reliable. Mr. Huberman was, for a time, the solicitor of Canamera Enterprises Ltd. and PAP Holdings Ltd. It would appear that the appropriate comment to make here is that the accusers have forgotten the old adage "that the solicitor is neither right nor wrong, he just takes instructions." Thus, the solicitor cannot be blamed for what he did on the instructions of his clients unless he has knowledge of the true nature of their activities. There was no credible evidence of any such knowledge on the part of Mr. Huberman. Any allegations of wrong-doing on his part were, on the basis of the evidence before me,

and even without the necessity of calling Mr. Huberman, considered to be unfounded.

3. With respect to Mr. Wachowich, the allegation against him is that he improperly took assets in payment of his fees. I am satisfied that Mr. Wachowich dealt with the assets of the company in question as he had been instructed to do by persons whom he honestly understood to have the authority on behalf of the companies to instruct him, and any allegations of impropriety against him are unfounded.

4. There was an accusation against a Mr. Paul Steffanson, a shareholder who was involved in attempting to find out what had happened to the assets of these companies. This accusation was that he improperly solicited financial assistance from fellow shareholders to assist him in this respect, and that he improperly offered his fellow shareholders a prior right of compensation for this contribution in the event that any assets could be found. In my opinion, the actions of Mr. Steffanson in this respect were reasonable, and, in the second case, if he made a mistake in law it was innocent. In any event, his proposition was fair and reasonable. Any allegation of impropriety on his part in this respect is unfounded.

5. Accusations were also made against the Royal Canadian Mounted Police. These were of two types: first, some

attacked the R.C.M.P. for causing them embarrassment by reason of the fact that they were conducting investigations; others accused the R.C.M.P. for having failed to aggressively investigate ! Thus it can be said that " the policeman's lot is not a happy one." I comment in detail elsewhere on the activity of the law enforcement agencies in this province, but I wish at this point to say that there was no evidence before me of any impropriety on the part of any member of the R.C.M.P. and any accusation of impropriety on their part is unfounded.

6. There were also criticisms made before me of agencies of the British Columbia and Federal governments. As I said during the course of my Inquiry, it was not my duty to investigate the activity of these agencies, but I should say that no evidence came before me of any impropriety or negligence by any officer of any other government.

7. Lastly, allegations of "inaction" were made against two Ministers of the Crown, The Honourable E. Gerhardt and The Honourable Ambrose Holowach. Elsewhere I comment on the activities of Departments of Government during times when they were the Ministers in charge, but I wish to say at this time that there was no evidence before me of any impropriety on the part of either Minister or that either Minister was *directly* responsible for any inaction by his Department. Any such allegation is unfounded on the basis

of the evidence before me.

D. Evidence of Possible Criminal Activity

I did not interpret my terms of reference as charging me with the responsibility of inquiring into criminal activity. However, during the course of the Inquiry evidence came before me which would justify further inquiry to determine if there have been violations of criminal statutes. I conceive it to be my duty, as any other citizen, to draw this to your attention.

I understand that sub-paragraph (e) of Order-in-Council 1157/73 authorized me not to proceed to inquire fully into an otherwise relevant matter if, in my opinion, it would be fully reviewed in another proceeding. I have therefore limited inquiry into acts possibly involving criminal behaviour to the extent necessary to gain only an understanding of the history of the companies. I have limited further inquiry into such matters to prevent, wherever possible, any publicity which might prejudice any future criminal prosecutions.

Also, my comments with respect to possible criminal violations have been isolated and placed in Appendix E, so that the Government may, if it decides to make the balance of the report public, readily segregate this portion of the report and not make it public, at least until after any prosecutions which may be brought are disposed of.

Manner of Proceeding

In this Inquiry I have, as I have mentioned considered myself properly guided by the Salmon Report, and have attempted to follow the six "cardinal principles" set forth in that report for the conduct of such an Inquiry, namely,

1. Before any person becomes involved in an Inquiry, the tribunal must be satisfied that there are circumstances which affect him and which the tribunal proposes to investigate.
2. Before any person who is involved in an Inquiry is called as a witness, he should be informed in advance of any allegations against him and the substance of the evidence in support of them.
3. He should have adequate opportunity of preparing his case and of being assisted by legal advisers. His legal expenses should normally be met out of public funds.
4. He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the Inquiry.
5. Any material witnesses he wishes called at

the Inquiry should, if reasonably practicable, be heard.

6. He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him.

Having regard to the complexity of the matter under inquiry, it was felt that item (2) would be best served by making transcripts of testimony available to any person who so requested. As many persons were represented continuously before the Inquiry by counsel, it was felt that such counsel would keep a witness adequately informed without further effort on our part.

Where serious allegations were made against a witness who had already given testimony, he was so notified. Many persons were given an opportunity to return to give evidence but not all of them availed themselves of this opportunity.

With regard to item (3), arrangements were made for certain persons or groups of persons to be represented by the counsel of their choice from public funds. Some persons decided to be represented by counsel of their own choice and at their own expense and did not seek to be remunerated at the public expense. In my view, no injustice was thus done.

It is my sincere hope that this Inquiry was adequately conducted

in compliance with these principles and that those who appeared before the Inquiry have no criticism in this respect.

My reliance on the Salmon Report has led me to give some thought to the question of public inquiries generally and particularly the recommendation therein that such inquiries should not be invoked for matters of local or minor importance but only where there is a crisis of confidence in government (paragraph 27 of the Report). It follows that there should also never be an inquiry into matters purely of a private nature. Having given these questions some consideration, I have made certain recommendations in this respect. None of these comments should be construed as a criticism of the Executive Council for having convened this Inquiry as, in my opinion, the appropriate criteria are available in this case.

Conclusion

I wish to conclude this introduction by expressing gratitude to all of the governmental agencies under inquiry for their cooperation and assistance, to the witnesses and to counsel for their cooperation, to Mr. Ford, the Chief Court Reporter, and the Supreme Court Reporters at Edmonton for their cooperation in ^{the} production of transcripts, and to other officials in the Law Courts who, notwithstanding their other duties, were most kind and cooperative in providing facilities and other assistance for the conduct of the Inquiry. I would also like, particularly, to express my gratitude to Mr. Eric Geddes, C.A., who, at a time when a most regrettable illness in his family bore heavily on his time and attention, nevertheless produced information

and opinions which were invaluable to me, and without which this Inquiry could not have been adequately made. I would also like to thank the stenographic staff at the Law Courts for their dedicated and patient efforts to assist me in the production of this Report.

Finally, I would like to offer my gratitude to my counsel, J. C. Major, Q.C., without whose candor, patience, humour, intelligence, common sense and hard work this Inquiry could not have been completed as quickly as it has. His efforts, as he would be the first to admit, were invaluable.

CHAPTER II

A HISTORY OF THE COSMOPOLITAN LIFE ASSURANCE COMPANY
AND RELATED COMPANIES

CHAPTER II - A HISTORY OF THE COSMOPOLITAN LIFE ASSURANCE COMPANY AND RELATED COMPANIES

Introduction

Prior to the establishment of this Inquiry, there seems to have been a great deal of speculation, both public and private, as to the reason for the collapse of the companies under review, that is, The Cosmopolitan Life Assurance Company, PAP Holdings Ltd., Sioux Holdings Ltd., Canamera Enterprises Ltd. and Rocky Holdings Ltd.

At least one reason for this seems to have been that nobody clearly understood exactly what happened. As a result, many persons have been left confused and this confusion has been potent fuel for the wildest sort of speculation.

In my view, therefore, it is in the public interest that a concise history of these companies be given. This provides not only the necessary and proper context for commenting on governmental involvement, but hopefully will serve to overcome some confusion in the minds of investors and other interested persons.

A fair capsule history is difficult to prepare as there were involved many people, many companies, and many actions over many years. I have tried to serve the contradictory demands of clarity and completeness by keeping the narrative relatively straight-forward and filling in details in footnotes. In this way, the story is hopefully understandable to the lay reader, while those with a more professional or specific interest may refer also to the footnotes in Appendix B.

The Nature of the Life Insurance Business

The Cosmopolitan Life Assurance Company (Cosmopolitan) was, of course, a life insurance company. To properly appreciate how such a venture would fail, it is first necessary to understand certain basic facts about this business.

1. Reserves

Unlike other forms of insurance, there is always a claim on a life insurance policy. The successful insurer, therefore, must collect premiums from policyholders sufficient not merely to meet operational expenses, but also to enable the company to pay the claims when they inevitably come. Therefore, by logic, good management and operation of law, a certain portion of the assets of a life insurance company must be set aside in "reserve" to pay future policy claims.

These reserves must be free from all other claims so that they can be available when needed. They may be invested, but only in very conservative investments bearing very little risk of loss and therefore little opportunity for gain. The nature of such investments is carefully regulated by law.

Since, in its early years, an insurer cannot possibly have sufficient premium income to meet possible future claims, it must obtain capital investment and set that aside in reserve, i.e., in low income investment.

Thus, a substantial portion of the initial investment in a

new life insurance company will produce little return to the investor.

2. Selling and Administration Expenses

A life insurance company must also pay the expense of selling and administering the policies, which of course includes the selling commissions to the agents, promotional expenses, the salaries to management personnel and other administrative expenses.

3. Premium Rates

Obviously, the premium rates of the insurer must be competitive or the company will sell no insurance. The level of competition in Canada has reduced premium rates to the point where a life insurance company will pay out more toward selling expenses, administration costs, and actuarial reserves on a new policy than it will receive in premium. In a sense, then, a life insurance company loses money on every new policy that it sells.

4. Profitability

The profitability of a life insurance company derives not from the selling of life insurance policies but from the keeping in force of those policies.

As a life insurance policy continues in force, with the premiums regularly paid, the administration and selling expenses each year go down so that there finally comes a point in the history of a policy where the company makes a profit rather

than a loss on the premium.

I have received varying estimates as to when this point comes. They vary between 5 and 10 years but a fairly generally accepted median would be 6 to 7 years. (1)* Therefore, a life insurance company must expect to lose money on each policy sold for at least 6 to 7 years after it is sold. Only then do the profits come.

Several significant points flow from these facts:

5. Lapses

If a policy of insurance is cancelled before it is making a profit for the company, the amounts lost to the point of cancellation are lost forever. Since, under law, a policyholder can cancel his insurance at any time, it is critically important to the success of the insurer that it not allow policies to lapse. Thus, the profitability of an insurer is directly related to its ability to maintain the confidence and goodwill of the policyholders.

6. Selling Policy

Management must see to it that the salesmen sell only "good" insurance, i.e., insurance that is likely to remain in force. But the salesman is paid a commission on every policy

* Such numerical notations are to the Footnotes in Appendix B.

sold. Therefore, while the salesman may prosper, the company may fail. Thus, there is a conflict of interest between the good management of the company and what is good in the short term for a salesman.

Therefore, in any well-run insurance company there must be a clear distinction made between management, who are responsible for the careful operation of the company to produce a profit for the investor, and the sales staff, whose principal interest is to sell life insurance and earn commissions.

7. Cost Projections

Ordinarily an insurer cannot increase prices as expenses go up as do other businesses. What it sells, it sells on a long-term basis. In the case of ordinary life insurance, a premium set in 1974 will be the same 25 years later. Thus, in calculating premium rates, the company must not only meet the competition but must carefully calculate its future expenses.

The role of the actuary is to do these complex calculations. The actuary must make certain assumptions, not only about the lapse rate and the claim rate, but also about the administration and selling costs for a long time into the future. The role of the management is to adhere to the actuarial projections or the company will not make money on the premiums as soon as hoped, or ever.

8. Capital Requirements

Since money is lost on each new policy sold, money must be

found by a new insurance company to cover that loss. This can only come, basically, from investment in the company by shareholders. This investment must be sufficient to cover losses until the policies are old enough to produce a profit which, as mentioned, is 6 to 7 years. This need continues until the company has built up such a large block of old business that it can pay for its operations, i.e., the expense of selling new insurance, out of the profits on the older policies. Therefore, a new life insurance company requires capital, not merely to establish reserves, but also to cover the inevitable operational losses for several years.

If the company fails to maintain the needed capital flow over these years, the company must inevitably become insolvent and fail.

9. Management Role

Effective management is the key to success of a new insurer. Management must see that the lapse rate is kept within projected levels by the maintenance of sound selling policies and adequate control over sales staff and by keeping the confidence of policyholders.

It must also obtain sound actuarial projections for each form of policy sold and keep the selling and the administration costs within these projections.

It must maintain adequate capital flow by maintaining investor

confidence.

10. Conclusion

From the point of view of an investor, the conclusion is obvious. Investment in a new life insurance company is highly speculative. Profitability rests completely with the ability of the company to maintain the goodwill of its policyholders. Survival itself rests on its ability to maintain investor confidence. And, there can be no hope for any return on investment for many years.

In the opinion of one expert before the Inquiry, investment in a life insurance company is not and never will be a particularly attractive form of investment. (2)

Having reviewed these basic facts, we will now examine the history of Cosmopolitan.

A History of Cosmopolitan Life Assurance Company

1. Introduction

Cosmopolitan came to life on the 30th of March, 1962. Its birth was accomplished by a special Act of the Legislature of Alberta. (3) It was finally laid to rest on August 21, 1972, when, by an Order by the Supreme Court of Alberta, a liquidator was appointed to wind up its affairs. (4) This he is in the process of doing, and this Inquiry does not extend to his exercise of his duties, which are under the supervision of the Supreme Court. This report, then, deals with the 10 years and

113 days of the active life of Cosmopolitan.

So far as could be determined by the experts brought in by the Inquiry, the total investment in the company was \$2,166,255.00.⁽⁵⁾ This figure has been put together on the basis of the best available information.⁽⁶⁾ I am satisfied, however, that the total investment in Cosmopolitan was at least in this amount.

At the time of liquidation, the assets available to the liquidator had a value of \$304,450.00.⁽⁷⁾ The loss, therefore, to the investors of the company was \$1,861,805.00.

This loss occurred in many ways on many occasions over the course of the history of the company.

2. The Life Insurance Operations

Cosmopolitan obtained a license to sell life insurance from the Superintendent of Insurance on the 12th of June, 1963, and immediately commenced carrying on business.⁽⁸⁾

As might be expected, in each year of operation thereafter, it suffered an operational loss.⁽⁹⁾ During the formative years there was more than sufficient capital flow to keep the operation solvent.⁽¹⁰⁾ But, the company continued to sell more new life insurance which, in turn, required more and more capital to keep the company going.⁽¹¹⁾ To the end of 1965, the company was successful in this respect.⁽¹²⁾ Commencing in 1966 the capital flow into the company began to reduce, and

by 1967 had substantially stopped. (13)

Meanwhile, according to the government actuaries who studied the company in early 1966 and again through 1967 and 1968, the management expense level and the lapse rate were such that it was difficult to foresee when the need for new capital would end, or, to put it another way, the company would start to make a profit. (14)

It is clear, then, that by the end of 1966 the projections for the company were serious. By the end of 1967 they were critical. By the end of 1968 they were impossible. This is because the company needed more capital, (since its expenditure level and lapse rate were exceeding normal projections) and no capital was forthcoming. (15)

When a new company is in such a position, it has only one realistic option available and that is to sell its block of insurance business to another insurer who has the capital available to carry on with the business until it returns a profit. After its own consulting actuaries and the government pressed this point upon it for some time, Cosmopolitan finally determined upon this course of action. (16)

Amalgamation is sometimes described as another option. But, in layman's terms, this is just another way of selling the business. In an amalgamation, one in effect sells one's company to another company in return for shares in the other company.

Thus, amalgamation is just a special way of selling.

The technicalities are not important. What is important for a company in the situation in which Cosmopolitan found itself in 1969 is to sell its life insurance business.

So far as I can determine, in late 1968 and in early 1969 the company finally began to turn its mind to this necessary action. (17) There followed a long period of abortive negotiations which finally culminated in an agreement with Seaboard Life Insurance Company (Seaboard) at the end of December in 1969. (18) The negotiations with Seaboard extended over almost one year. (19) Then, the two companies took a further nine months to actually complete the transfer of business. (20) This was not accomplished in fact until September of 1970, (21) so that what was needed in 1968 was not done until 1970.

Even when the sale to Seaboard was accomplished, not all of the life insurance business of Cosmopolitan was sold to Seaboard.

In 1969 Cosmopolitan had begun to sell an equity-linked type of insurance contract. (22) This is an insurance policy that is part life insurance and part investment. This block of business was not sold to Seaboard. Policies of this sort continued to be sold into 1970 by Cosmopolitan and this block of business was never sold by the management. It was not taken out of Cosmopolitan until August 31, 1972, and then by the action

of the Superintendent of Insurance. (23)

A significant aspect of this special form of policy is that, because some of the premiums paid were in fact paid for the purpose of investment rather than for mere insurance, the Superintendent required of the company that it set aside a certain portion of each premium in a "segregated fund" which, in effect, was held in trust for these policyholders. (24) By the end of 1969 the funds that were to be so segregated amounted to \$36,627.53. (25) By the end of 1970 they rose to \$140,144.28, (26) and by the time of sale in 1972 had risen to \$198,702.58. (27) We will return to this subject shortly.

3. Loss on Life Insurance Operations

By the end of 1970, the net operational losses of the company totalled \$1,280,509.00. (28) The asset that the company had developed as a result of this expenditure over a 7-year period were two blocks of life insurance business. Theoretically, the sale value of these two blocks of insurance should have been equal to the net operational losses because the same actuarial projections that should have applied to the development of the policies would apply to the calculation of the value of the policies for sale purposes. In fact, the actuarial valuation of the business sold to Seaboard was \$749,893.00. (29) In fact, the valuation of the equity-linked contracts when ultimately sold was \$7,681.00. (30)

Thus, after 7 years of operation, the company had incurred

net losses of \$1,280,509.00, ⁽³¹⁾ and developed in return a business worth only \$757,574.00. Thus, during the course of its 7 years of operation the company had a net loss of \$522,935.00 on its insurance operation. It also had organizational expenses of \$231,809.00 (i.e. the cost of organizing and selling shares). Any offsetting asset was lost when the company lost its license and went into liquidation. ⁽³²⁾ It also had capital losses and sundry losses totalling \$162,046.00, which partly came from depreciation of investments by stock market deflation.

The total losses on insurance operations were, then, \$916,790.00. ⁽³³⁾

4. Reasons for the Loss

It would appear that this loss can only be explained by a failure of management.

(a) The most significant fact in support of this conclusion is the lapse rate. The normal lapse rate was substantially exceeded every year by Cosmopolitan. ⁽³⁴⁾ For example, in the year 1967 Cosmopolitan sold 414 new policies, but 362 lapsed ! ⁽³⁵⁾ In terms of net insurance in force, that is total value of insurance in force less the amount re-insured, there was no significant increase in business between 1966 and 1969, when the business was sold. ⁽³⁶⁾ In fact, it can be fairly said that the only good year that Cosmopolitan ever had was 1965. ⁽³⁷⁾

(b) It would appear that the President of the company,

Albert Jaasma was, for many years, himself personally responsible for the sale of life insurance. (38) As mentioned before, there is a conflict of interest between the best interests of the salesman and the best interests of the management of the company. Mr. Jaasma has said that he never collected sales commissions. However, all selling by him was channelled through a firm known as Peter Van Rhyne Agencies which did receive a sales commission on all sales. (39) This firm came to be owned by PAP Holdings Ltd., a company of which Albert Jaasma was a substantial shareholder. (40) In the result, then, Albert Jaasma did benefit indirectly, if not directly, from commissions on life insurance sold by him, and therefore did have constantly before him the conflict of interest mentioned. This fact was noted by several persons outside and inside the company as early as 1966. (41) The situation never changed.

(c) I have also heard some evidence to indicate that the management of the company was somewhat extravagant in terms of personal expenses and salaries. (42) This company was never more than a small struggling life insurance company. The maximum number of policies ever in force was 1,315. An operation of this size did not warrant the imperial life style of the President as described to me by many witnesses.

(d) The records of the Superintendent of Insurance

indicate that the actuary brought in by him in 1966 to examine the affairs of the company reported serious administrative deficiencies in the operations of the company. (43)

The Superintendent and his consulting actuary met with the then chief officers of the company, Mr. Connauton and Mr. Jaasma, in June of 1966 to warn them of the serious situation they saw for the company and to make certain specific suggestions, one of which was that Jaasma be removed from any managerial responsibility in the company. (44)

The record indicates that an undertaking was given that something would be done. (45) By February, 1968, some of the more independent directors of the company resigned. (46)

After the 1967 annual meeting, where Mr. Connauton had been re-elected Chairman of the Board, he circulated among the members of the Board a memorandum calling for substantial changes in the administration of the company, including the removal of Jaasma from any managerial voice. (47) These suggestions were substantially the same as those made by the Superintendent almost a year earlier. (48) At the next meeting of the Board, Connauton was summarily removed from office and later left the company. (49) He was replaced as Chairman by Dr. James A. Lampard. (50) Soon after, the then General Manager of the company left and was replaced by Peter Van Rhyn. (51) There was no further talk of the removal of Albert Jaasma.

Meanwhile, Mr. William McKinnon had joined the staff

of the Superintendent of Insurance and from July, 1967 on there was no further suggestion from the office of the Superintendent of the removal of Albert Jaasma from management. (52)

Instead, what clearly occurred was that Albert Jaasma became the dominant voice in management. (53) In 1967, with the accession of Lampard to the chairmanship of the board of directors, a management committee consisting of Jaasma, Lampard and Van Rhyn was formed and thereafter the Board ceased to have much effective voice in the affairs of the company. (54) As each relatively independent and experienced director resigned, he would tend to be replaced by a relatively inexperienced person with no, or virtually no, knowledge of the affairs of the company or its problems. (55) Meanwhile, the management committee received a vote of confidence from the shareholders at each subsequent annual meeting until 1971. (56)

To what extent the losses on insurance operations were a result of unfortunate and unavoidable business experience, and to what extent a result of the extravagance and incompetence of management, is impossible at this stage to say. From the reasons above listed, there are indications that the latter factors were very much at play. (57)

5. Summary: Losses on Insurance Operation

By 1970, then, Cosmopolitan had irretrievably lost \$916,790.00

on its insurance operations.⁽⁵⁸⁾ At that point, then, had the company been placed in liquidation, the shareholders would have suffered a significant loss but would have recovered a substantial portion of their investment.⁽⁵⁹⁾

6. Other Losses: The Seaboard Shares

It should be observed that it was the intention from 1968 that the business of the company be sold and the company then put into liquidation and its assets distributed to shareholders. Ultimately that occurred. But, regrettably, other things happened first.

When the major portion of the life insurance business was sold to Seaboard, it was sold not for cash but for shares in Seaboard. Cosmopolitan received 103,433 shares in Seaboard.⁽⁶⁰⁾ Then, in October, 1970, Jaasma and Lampard, without the authority of the directors, caused the Company to borrow \$450,000.00 against the security of these shares, *inter alia*.⁽⁶¹⁾ Then, notwithstanding the clear conflict of interest involved, these men then caused the entire proceeds of the loan to be loaned to Canamera Enterprises Ltd.!⁽⁶²⁾

Subsequently, Canamera Enterprises Ltd. (Canamera) defaulted in the loan to Cosmopolitan in its entirety, and Cosmopolitan in turn defaulted. After being put under considerable pressure by the lender for repayment and being unable to comply, and being faced with the threat of suit, the officers of Cosmopolitan in March, 1971, transferred outright the shares of Seaboard to the

Tender, Northwest Trust. (63)

Thus, the asset acquired by the company in return for the block of business it had developed over 7 years was lost in its entirety. The acquisition cost of this loss was \$749,893.00, although its real value at the time of loss may have been already depreciated. (64)

7. Other Losses: The Government Deposit

In 1970, the only other significant asset of the Company was a deposit of approximately one-half million dollars in securities earlier placed with the Superintendent of Insurance by law to protect possible policy claims. (65) This deposit was in the form of securities, which had been somewhat reduced in value because of deflation in the stock market. (66)

Meanwhile, the company had misappropriated all of the money (\$198,702.58) it should have segregated for the benefit of policyholders on the equity-linked policies. (67) Of this, some seems to have been paid out on various expenses, but \$65,000.00 was transferred outright from the company to Canamera on December 28, 1970 on the authority of Lampard and Van Rhyn, without authority from the directors or shareholders. (68) This money was never repaid.

Thus, the Superintendent of Insurance was required to dispose of a portion of the deposited securities to satisfy the lawful claims of the policyholders in this respect. (69) After this, securities of a value of only approximately \$304,450.00 remained on deposit with the Government, and, aside from certain

small assets, this was all that remained of the investment in
Cosmopolitan : (70)

8. Other Losses: Smaller Assets

In April, 1971, the shareholders met and removed the management committee from office, but did not replace the officers or elect a board of directors. (71) From then until the time it was put into liquidation the company was left, legally speaking, in a state of limbo. There was nobody lawfully authorized to deal with its affairs. (72) During this period certain smaller assets of the company disappeared. (73) When the liquidator was appointed all remaining assets in the hands of the Superintendent were turned over to him, but other smaller assets could not be found.

9. Summary of Losses

In summary then, of the \$2,166,255.00 (74) invested in the company, only \$304,450.00 (75) remained available to the shareholders at the time of liquidation for a total loss to shareholders of \$1,854,124.00. This loss is roughly accounted for thusly:

Capital Losses	\$ 162,046.00
Organizational Expenses	231,809.00
Irrecoverable Operational Losses (i.e. net operational losses to the end of 1970 less the value of the business sold)	522,935.00
Loss on Loans to Canamera (the Seaboard shares and others)	\$ 937,334.00
TOTAL	<u>\$ 1,854,124.00</u>

The reasons for the failure of Cosmopolitan may be briefly summarized thusly:

- (a) Lack of adequate capital flow, which necessitated the closing down of the company's insurance operation.
- (b) Inadequate management, which resulted in irrecoverable operational losses.
- (c) The transfer out of the company of assets of the company at a cost value of at least \$937,334.00.

It is clear that the responsibility for all three causes lies directly with the management of the company.

It is also clear that Cosmopolitan did not so much fail as it was destroyed. It was destroyed by the improvident acts of its principal officers.

A History of PAP Holdings Ltd.

1. Introduction

PAP Holdings Ltd. (PAP) was born, lived, and died in a maelstrom of deceit, lies and trickery. \$2,517,252.00 was definitely invested in this enterprise, plus another \$700,845.00 that is not definitely confirmed, for a total of \$3,218,097.00. (76)

It was originally incorporated by Peter Van Rhyn, Albert Jaasma and another Peter (hence PAP). (77) As is documented

by Mr. Hale in his report, the company *before* its incorporation was involved in a most peculiar transaction! This affair was thoroughly gone into in Mr. Hale's report, exhibited before me. (78) Suffice to say that, even in its infancy, this company was involved in transactions of dubious propriety.

2. The Holding Companies

Later, in 1966 and thereafter, PAP together with another company called Sioux Holdings Ltd. was used as a vehicle by the Jaasma group to obtain voting control of Cosmopolitan. (79)

It was intended then that PAP merely be a holding company. (80) A holding company is a company that has no business of its own but merely holds shares in another company that does conduct a business, in this case Cosmopolitan.

The pyramiding of holding companies is a common device for a group to retain control of the company at the bottom of the pyramid while in fact having invested far less than a controlling interest. Thus, if company B owns 51% of the outstanding stock in company A, it controls company A with only 51% of the total investment in company A. Then, if company C obtains 51% of the stock in company B, it will control Company B and, through it, company A. If an individual, or a group of individuals working as a team, own 51% of company C, they will control company C and company A, but with an investment of approximately $12\frac{1}{2}\%$ of the total. Such pyramiding can go on indefinitely.

By 1966, by reason of the alleged threat of a takeover of Cosmopolitan by another group, Jaasma organized a pyramid of holding companies. The first holding company was PAP , and the second was Sioux Holdings Ltd. (Sioux). Jaasma and a relatively small group controlled Sioux, and through it apparently intended to control Cosmopolitan. (81)

The first step, then, was for PAP to acquire a controlling interest in Cosmopolitan. This was done through two means: the outright purchase of Cosmopolitan shares by PAP, and the trading of PAP shares for Cosmopolitan shares.

It is difficult to understand why a Cosmopolitan shareholder would agree to such a trade, as it would have no particular advantage to him. Nevertheless, PAP was successful in arranging a considerable number of trades and, where necessary, outright purchases. PAP soon acquired a controlling interest in Cosmopolitan. (82)

A great number of the Cosmopolitan shares obtained by PAP in trade for PAP shares had not been fully paid for. Many shareholders in Cosmopolitan had bought their shares on time-purchase plans, and these shares had not been fully paid for at the time they were traded to PAP. Thus, PAP became liable to make payments to Cosmopolitan and, in turn, made similar arrangements with the new shareholders of PAP. (83) As a result, capital began to flow into PAP and, possibly to some degree, from PAP into Cosmopolitan, though not for long.

It should be observed, however, that the records are inadequate and there seems to have been a great deal of confusion arise in transfers of money. Several disputes arose with investors during this period. ⁽⁸⁴⁾ Also, some persons traded Cosmopolitan shares directly into Sioux rather than PAP and the pyramid structure was not precisely maintained. ⁽⁸⁵⁾ Suffice it to say that there was considerable organizational confusion. For practical purposes, then, Sioux Holdings Ltd. and PAP Holdings Ltd. may be thought of as one enterprise, although by far the greater involvement lay with PAP. Also, there was considerable common directorship between PAP, Cosmopolitan and Sioux. ⁽⁸⁶⁾ Jaasma, Van Rhyn, and Lampard acted as the management committee of PAP as well as Cosmopolitan from this period. ⁽⁸⁷⁾ As a result, there was a tendency to confuse the activities of all these companies.

3. The Conglomerate

While it was the expressed intention of the parties to organize these companies in this way merely to maintain control of Cosmopolitan against "outside interests," it would appear that almost from the outset new share investment in PAP was sought. ⁽⁸⁸⁾ That is, shareholders of Cosmopolitan not only traded their shares in Cosmopolitan to PAP for PAP shares, but also agreed to purchase more PAP shares. So also, persons from time to time loaned money to PAP. ⁽⁸⁹⁾ So that PAP became a vehicle for investment rather than a mere holding company.

PAP acquired by purchase from Peter Van Rhyn an insurance

agency known as Peter Van Rhyn Agencies. (90) This agency sold insurance for Cosmopolitan. (91) Van Rhyn sold this agency to PAP for 150,000 shares in PAP of a par value of \$1.00. (92) Then, PAP signed an exclusive agreement with Cosmopolitan whereby Peter Van Rhyn Agencies, its subsidiary, would become the exclusive sales agent for Cosmopolitan and would receive a 80% over-ride commission from Cosmopolitan. (93) This was done notwithstanding the conflict of interest involving the common directors. (94)

PAP then began to branch out into other activities. It acquired not only Peter Van Rhyn Agencies, but also several general insurance agencies and other investments.

The idea, as expressed by Lampard, Jaasma and Van Rhyn, was to establish a "conglomerate", that is, a company that owns and controls a variety of businesses. (95)

In 1967, then, PAP purchased the Balmoral Building in Red Deer from a company, the dominant shareholder of which was Dr. Lampard, for shares in PAP. (96)

Many acquisitions involved a sum of money down and a balance payable over time, such as the purchase of Riddle Agencies and Specialty Metalcraft. (97)

PAP also entered into a very complicated transaction with Mr. Michael Lux to acquire farm property. (98)

It also negotiated for the purchase of a radio station, a television station, and a small airline. None of these ever came to fruition, however. (99)

Whatever assets PAP acquired in this matter it would immediately mortgage or borrow against them in some form or another to the ultimate available. (100)

4. Collapse of the Conglomerate

Defaults were subsequently made on these loans and in this fashion the farming interests of PAP and the Balmoral Block were lost. (101) There was also a default made in payments due to Riddle under the agreement to purchase his business and this was subsequently transferred back to him. (102) There was also a default made in the agreement to purchase Specialty Metalcraft and that business was sold at a loss. (103)

In summary, the conglomerate investments of PAP all failed for one reason or another.

PAP lost considerable sums of money in its farming operations, also. (104)

The only interest that was not lost was Peter Van Rhyn Agencies, but when Cosmopolitan was sold to Seaboard this agency ceased to have any business activity and became worthless. (105)

It is significant that most of the "conglomerate" investments

made by PAP during this stage were with directors and principal shareholders of PAP. (106) In no case were there independent valuations, and, in at least one case, that of the dealings with Lampard on the Balmoral Block, it is my opinion that the asset was over-valued at the time of the transfer. (107)

During the time (1967-69), when its subsidiary Cosmopolitan desperately needed new capital, PAP was raising new capital, but this money was being spent on these conglomerate activities and not to keep Cosmopolitan alive.

5. The Seaboard Acquisition

By late 1968 and early 1969 Cosmopolitan was, as we have seen, in serious difficulty. When the pressure to do something about Cosmopolitan came to a head in 1969, the management of PAP, who controlled Cosmopolitan, decided to do more than merely sell Cosmopolitan. They decided, rather, to sell it to Seaboard and at the same time to take control of Seaboard! (108)

Thus, during 1969, while it was negotiating for the sale of the business of Cosmopolitan to Seaboard, PAP was also arranging privately for the purchase of additional Seaboard shares. It ultimately acquired 107,965 shares in this fashion. (109) Then, at the end of 1969, when the sale of the Cosmopolitan business to Seaboard was completed for 103,433 shares of Seaboard, PAP had effective control of Seaboard. Thus, in early 1970, the management of PAP took over management control of Seaboard. (110) Jaasma, Lampard and others went on the board of Seaboard and

some of them joined the Seaboard management committee. (111)
Seaboard, however, kept in office its long-time president,
Mr. Harry Seed. (112)

Thus PAP, instead of getting out of the insurance business
extended itself more deeply into the insurance business.
Through its purchase of shares directly and through the transfer
of business by Cosmopolitan, PAP had a total investment in
Seaboard of approximately \$1,505,648.00. (113)

6. British Columbia Life and Casualty Co.

Sometime during 1969, the PAP management decided to extend
its investment in life insurance companies by further acquisition
or amalgamation beyond Seaboard. (114)

They began to negotiate with certain shareholders of Columbia
Beneficial Holdings Ltd. (CBH), a company which owned yet another
life insurance company called British Columbia Life and Casualty
Co. (B.C. Life). (115) This was another small life insurance
company based in British Columbia, as was Seaboard. (116) In
early 1970, agreements were apparently made for the acquisition
of 204,000 shares in CBH in an attempt to take control of CBH
and, through it, B.C. Life. (117) The idea was to merge B.C. Life
with Seaboard into one larger company.

However, PAP failed. Other directors of CBH, when they
heard of this effort, made a deal with yet another company,
N.W.L. Financial Co. Ltd. (NWL Financial), the president of

which was Peter Ropchan. As a result, NWL Financial successfully out-maneuvered PAP and took control of CBH, thus frustrating the ambitions of PAP. (118)

7. Canamera Enterprises Ltd. and Rocky Holdings Ltd.

At this point in the history a new complication arises.

For various reasons, the PAP management decided to establish two new companies to control their venture. The first was Canamera Enterprises Ltd. (Canamera), a public British Columbia company, and the second was Rocky Holdings Ltd. (Rocky). (119) Rocky was to be a holding company controlling Canamera. (120) The shareholders of Rocky were limited to the management group and certain others. (121)

A plan was struck, although never implemented, whereby at some future point, after all necessary governmental approval was obtained, shareholders of PAP could acquire shares in Canamera in exchange for shares in PAP. (122) Meanwhile, the officers of Canamera dealt with the assets of PAP as though they were assets of Canamera and indeed there were documents prepared in 1970 purporting to transfer the assets of PAP to Canamera. (123) During this period the management seemed to deal with the assets and funds of PAP and Canamera interchangeably.

Thus it was that the activities in 1970 were carried on largely in the name of Canamera. At the same time, however, funds to pay for these activities were being raised both in

Canamera and in PAP. (124) Most of the money seems, however, to have been raised by PAP with the understanding given to investors that they would ultimately obtain shares in Canamera. (125)

8. NWL Financial Co. Ltd.

PAP/Canamera, in early 1970, decided to purchase a controlling interest in NWL Financial, the company that had earlier outmanoeuvred them for control of CBH. (126) By then, NWL had two insurance companies: Northwest and, more recently, British Columbia Life. (127) The idea, again, was to amalgamate these two with Seaboard so as to combine the operations of four companies. (128) Canamera was the vehicle used in this effort.

Negotiations were entered into in June, 1970, for the acquisition of 668,000 shares in NWL Financial from a group in the Bahamas known as Residential Resorts Development Ltd. (RRD). The purchase price was \$4,443,950.00, which represented approximately \$7.00 per share. \$310,000.00 was the down-payment and the balance was payable over time, with the last payment to be made not later than July 15, 1972. (129)

This commitment required funds far in excess of anything so far attempted by PAP. (130) Thereafter, in 1970, all its resources were applied to meet the obligations under this agreement.

Thus, while originally it was intended that this insurance enterprise be only part of the conglomerate activity of PAP,

these new money demands on PAP resulted in them being unable to complete or carry on the other activities. (131)

PAP also began a heightened campaign to raise money by way of investment or loans. Approaches were made to the sales staff of Seaboard, to the policyholders of Seaboard and Cosmopolitan, and the existing shareholders in PAP. (132)

It should be observed that neither PAP nor Canamera had been authorized by law to sell shares to the public and therefore the share selling activities of these companies were severely limited. Also, PAP was a private company, limited by law in the number of its shareholders, and various stratagems had to be adopted to get around that. (133)

NWL was a very large company and even the acquisition of the RRD stock was not sufficient to obtain a controlling interest. (134)

The idea of PAP was to amalgamate the life business of NWL and Seaboard, and then to have a large public sale of shares in this amalgamated enterprise which would be underwritten by established stockbrokers. (135) It was therefore necessary to have NWL first agree not only to an amalgamation, but to an amalgamation into a larger enterprise controlled by the Lampard/Jaasma group. So that an essential step was for this group to acquire management control of NWL, i.e. where a majority of the Board of Directors favoured this scheme. (136)

Thus, the group began to deal with the controlling group of NWL, headed by Peter Ropchan. In September, 1970, it made an agreement with Ropchan and later it made agreements with some other directors. (137) But none of these directors agreed to the amalgamation or to yield control of NWL voluntarily. (138) All they did was sell their shares. (139)

Ropchan explicitly refused to cooperate. (140) In September of 1970 the lawyer for Ropchan presented an agreement to Canamera not containing any such commitment. Against the advice of its solicitors, and some members of the Canamera board, this agreement was entered into. (141) Thus, the company failed to obtain the commitment that was the key to any realistic completion of its financing plans. This was a blunder of monstrous proportions. (142)

The agreement with Ropchan, like that with RRD, provided for term payments. The total price was \$700,000.00, which represented \$7.00 per share for 100,000 shares. (143) The down-payment was \$250,000.00 and the balance was required to be paid not later than December 15. So, between the RRD agreement and the Ropchan agreement, the following amounts were required to be paid on the following days:

<u>Payment Number</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>
1	July 7/70	\$ 310,000	RRD
2	Sept. 15/70	250,000	Ropchan
3	Oct. 15/70	310,000	RRD
4	Dec. 15/70	450,000	Ropchan
5	Jan. 15/71	310,000	RRD
6	Apr. 15/71	310,000	RRD
7	July 15/71	310,000	RRD
8	Oct. 15/71	310,000	RRD
9	Jan. 15/72	310,000	RRD
10	Apr. 15/72	310,000	RRD
11	July 15/72	2,200,000 (approx.)	RRD

From September, 1970, on, every effort was made to raise these funds.

No stone was left unturned. Assets of other companies were pledged or misappropriated, including assets of Cosmopolitan.⁽¹⁴⁴⁾ As a result, payments one, two and three were made, but by December the well was running dry. Default was made on the December 15 payment.⁽¹⁴⁵⁾ But the January 15 payment was made!⁽¹⁴⁶⁾ Meanwhile, banks and other creditors began to press.⁽¹⁴⁷⁾

Extensions of time were negotiated.⁽¹⁴⁸⁾ Desperate efforts at financing were attempted.⁽¹⁴⁹⁾ Finally, by March of 1971 the creditors would wait no longer. The well had indeed run dry! After the January 15 payment, no further payments could be made. Under the terms of both agreements, in the event of a default all monies were forfeit. RRD and Ropchan declared forfeiture. Other creditors realized on their securities. Virtually nothing was left.⁽¹⁵⁰⁾

A total of \$1,180,000 had been paid under these agreements and then lost on forfeiture.⁽¹⁵¹⁾

9. The Steering Committees

By April, 1971, the shareholders had become aware of what had occurred and removed management from office.⁽¹⁵²⁾ But, as with Cosmopolitan, they did not elect new officers, but rather selected a "steering committee" to explore possibilities of somehow recouping the disaster.⁽¹⁵³⁾ This committee was replaced by yet another steering committee in May, 1971, consisting of Gerald Sklar and Frederick Mansveld, principally because Sklar

offered the promise of arranging a miraculous recovery. (154)
That committee in turn was replaced on November 24, 1972 by yet another consisting of Messrs. Steffanson, Sieben, Oaks, Robert Lampard, Art Mallet and Mansveld whose function at this stage was only to find out what happened and whose efforts ultimately led to this Inquiry. (155)

Regrettably, from April of 1971 to date nobody had any legal authority to deal with the assets of the company. (156)
During this period some significant assets either disappeared or were otherwise disposed of by creditors at a loss to the company involved. (157)

10. Conclusion

So far as can be determined, \$3,218,097.00 was invested in PAP/Sioux/Canamera/Rocky. All of this is apparently gone. As mentioned, \$1,180,000.00 plus interest was forfeit on the abortive NWL transactions. The balance was lost on the disposition or forfeiture of other assets and on the salaries of the management team in 1970 at the time when these companies had administrative expenses but absolutely no income. (158)

The total loss to investors then, in all of the companies, including Cosmopolitan, was approximately \$5,000,000.00.

The cause of this collapse is, of course, the incredible improvidence of the management. Their actions were so wildly irresponsible that one may rightly suspect whether secret private

profits were the motivation, but no evidence of this could be found. The motivation must be found elsewhere.

How Could This Happen?

1. Background

In 1962 Albert Jaasma was a moderately successful life insurance salesman with the ambition to become yet another example of the capitalistic dream: a man who achieves wealth and prestige by the use only of his own wits and drive.

Alberta, in 1962, was prosperous and the stock market in North America was in the midst of a prolonged boom.

Also, there is a long tradition in Alberta of antipathy toward the fact that most financial institutions operating in the West have their head offices in Eastern Canada. This tradition has it that this fact is an example of "Eastern domination" and, to some, "Eastern exploitation." This has led to a yearning for locally owned and controlled financial institutions. This local pride, combined with new prosperity, led in the early '60's to efforts to establish several locally owned financial institutions, including life insurance companies, banks, and trust companies.

It has been demonstrated that the advantages to the local economy of having a locally owned life insurance company are minimal, and certainly have nothing whatever to do with the

profit capacity of such a company. (159) Thus, the fact that Cosmopolitan for example, was a locally owned institution in no way gave it any particular advantage in terms of earning profits. Its capacity to make a profit or not remained no better and no worse than if it had been located anywhere else in the world.

Also, there seems in the early 1960's to have been a widespread public misconception as to the profit capacity of a life insurance company. This derives from the fact that an established life insurance company, if properly managed, cannot help but continue to prosper. The record of newly formed life insurance companies anywhere, however, demonstrates the risks involved in starting a new company. This seems not to have been widely understood.

There is a long tradition in the life insurance company that all claims be paid. At times in the past other companies have stepped in to pay the policy claims of failed companies. As a result then, I am told that there has never been a case in Canadian history where a life insurance claim has not been paid. No doubt this tradition has contributed to the public misconception about life insurance companies. But it is one thing for there to be a history of payment of claims and quite another for there to be a history of profit to the investors.

Also, the life insurance industry in Canada has for many years been subject to government supervision. It is clear from an examination of the *Insurance Act* that this supervision

is designed to protect the policyholders, i.e., to insure that all policy claims be paid.

All of this seems to have given rise to a public misconception that a life insurance company cannot fail.

These public misconceptions, combined with local pride, and notwithstanding the highly speculative nature of a new life insurance company, created the appropriate climate for investment in life insurance companies in Alberta in the early 1960's. Even the government of the day succumbed to this mood and publicly encouraged the formation of such institutions. (160)

Thus, the climate was right, and Albert Jaasma was not slow to take advantage of it.

It was he, personally, who first successfully intervened with the government of the day to amend the Alberta legislation to authorize the incorporation of provincial life insurance companies. (161) This had been barred by law for several years on the ground that the Alberta Government lacked the facilities to properly supervise such an enterprise, and, were they to acquire the facilities, they would then unnecessarily duplicate similar facilities at Ottawa. (162)

Also, in 1962, there was another significant advantage to a life insurance company as a vehicle for the fulfillment of the ambitions of an aggressive promoter. Such a company was not, at

that time, subject to the supervision of the Alberta Securities Commission. (163)

Jaasma also was able to get responsible citizens to sit on the board of directors of Cosmopolitan largely because, no doubt, they too had succumbed to the ambition of all Albertans to establish local financial institutions.

2. The Promise of Large Capital Gains

While at the outset Cosmopolitan had every appearance of respectability and proper intentions, it relied almost exclusively on Albert Jaasma to sell shares. (164)

The appeal to the original investors was based, not on the only reasonable prospect, i.e., profit in the long-term from carefully managed growth, but rather on the prospect of a quick return based on a rapid speculative increase in stock values.

There was absolutely no justification at any time for any investor to suppose that there would ever be any rapid increase in the value of his shares in the public market. There is absolutely nothing about the nature of a life insurance company in its earlier years to justify such a speculative increase. Rather, everything about the nature of a life insurance company in its early years tends to depress the market value of shares.

But shares in Cosmopolitan were sold largely on the basis that there would be a quick profit. They were sold to relatively

unsophisticated investors. (165) Many were sold on a time basis with a small down-payment and balance payable over many years. (166)

3. Creation of an Illusion of a Capital Gain

Such an approach to selling will not last long because soon the truth will appear: there is no great demand for these shares and the price will not go up.

But Jaasma found an answer to this.

The company increased the share price of treasury stock regularly during the first three years of its operation. (167) The initial share price was \$125.00. This issue was split 10/1 so that in effect the 1963 share price was \$12.50. Over the next three years, the company regularly increased the price of treasury shares until in 1966 they had reached \$51.50 per share!

There was absolutely nothing about the financial affairs of the company to justify these increases. (168) There was absolutely no government regulation of this also. Neither the Superintendent of Insurance nor the Securities Commission had any power to exert control over this activity. (169)

As a result, however, the company was able to create the illusion that the shares were going up in value.

4. Maintaining the Illusion: Cosmo-West Securities Ltd.

Again, such an illusion cannot be long maintained

because sooner or later someone will want to sell his shares and will find that the alleged increase in value does not exist because there is no buyer at the higher price.

This possibility was averted in 1965 by the incorporation of a company called Cosmo-West Securities Ltd.

This company obtained a broker's license from the Alberta Securities Commission on the legitimate ground that it was necessary to provide a vehicle for the sale of shares in the secondary market of Cosmopolitan and another company, Canada West Insurance. (170)

But, at least insofar as its activity pertained to Cosmopolitan shares, this company acted, not as a broker or middleman, but rather as a principal. A stockbroker ordinarily is a person who puts buyers and sellers together so they can make a sale at a negotiated price. But what actually happened here was that whenever a person wanted to sell his shares, Cosmo-West or Albert Jaasma, through one of his personal companies, would buy them. Then, Jaasma would arrange to re-sell these shares to somebody else. (171) At the same time, however, he aggressively discouraged any attempt by a shareholder to sell his shares. (172) Since at the time he was also selling treasury stock of Cosmopolitan there was an inevitable intermingling of purchases of treasury stock and secondary stock. (173)

These desperate moves resulted almost automatically in

practices and activities that ran counter to the *Securities Act* and which resulted in the Securities Commission suspending the license of Cosmo-West even though, as one of its inspectors reported, this action would result in a rude shock to the investors in Cosmopolitan. (174)

In any event, during 1965, the activity of Cosmo-West was successful in maintaining the illusion that there was a ready market available for Cosmopolitan stock at a high price and that therefore an investment in Cosmopolitan afforded the opportunity for a substantial and quick profit. That this was an illusion became clear in 1966 when, after the license of Cosmo-West was suspended it became almost impossible to find a buyer at any price for Cosmopolitan stock. (175)

5. Maintaining the Illusion: PAP Holdings Ltd.

Thus, in 1966, a new crisis faced Albert Jaasma's ambitions.

How convenient for him it was, then, that the rumour spread that there was a bid by another group to take control of Cosmopolitan. Whether or not there was any truth to this rumour, it provided an opportunity to go out to the shareholders of Cosmopolitan and convince them that they ought to trade their shares in Cosmopolitan for shares in PAP. (176)

Thus, it was no longer necessary to provide a market for Cosmopolitan shares because now the shareholder could transfer his shares into PAP. These trades, of course, took place at the

highest value (\$51.50). This represented merely a paper profit, as all the investor got in return was shares in PAP. But it maintained, at least for the moment, the illusion of high profitability.

Never slow to turn a difficulty to advantage, Jaasma was now able to offer the investor the prospect of some mysterious participation in the "controlling group" of Cosmopolitan. (177) In fact, the conversion by a small investor of shares in a public company into an equally small interest in a holding company weakens rather than strengthens the position of that shareholder. However, the illusion that somehow this was to benefit the shareholder was successfully maintained.

6. Maintaining the Illusion: The Conglomerate

But how long would this last? Soon, the investor would begin to wonder what profit he really had obtained. Soon he would realize that now he merely owned shares in a private company. How was he to get his profit?

It was at this stage, in late 1966 and in 1967 that the conglomerate idea was born. The very expression "conglomerate" at the time had a glamorous appeal to the unsophisticated investor.

Strictly speaking, a conglomerate corporation is merely a corporate entity that happens to own businesses that have no direct relationship one to the other. Traditionally, a

corporate enterprise would limit its involvement to one particular field of industry. The conglomerate does not so limit itself. There is nothing particularly glamorous or intrinsically profitable about this.

But, in the bullish stock market of the late 50's and early 60's, several conglomerate companies were established in the United States which, through clever manipulations, were able to enhance their share value on the stock market by acquisition of other companies. This enhanced value was largely illusory and, ironically, the high market value of ^{many of} these companies had begun to collapse on the American stock markets at just about the time that Jaasma began to use the "conglomerate" idea.

The reason why conglomerate stocks escalated and declined on the market are extremely complex and were obviously not understood by the investors in PAP. All that they understood was that a conglomerate was something very glamorous and very successful.

As a conglomerate, PAP was pathetic. These conglomerate investments have already been reviewed. Nevertheless, the acquisition of these assets enabled Jaasma to talk about something new and maintain the illusion of growth and success. (178)

The fact, already noted, that during 1967-1969 PAP was raising capital and spending it in other ventures while Cosmo was slipping into insolvency for lack of capital clearly

demonstrates that the motivation of the management team at the time was not to manage these businesses on a sound basis towards ultimate success but rather to maintain the illusion of immediate success and thus satisfy the appetite for quick profits that had been aroused by Jaasma in the minds of the investors.

7. Illusion versus Reality: The Internal Threat

Meanwhile, inside Cosmopolitan, reality began to intrude on illusion.

The first clash came with Connauton in early 1967. As noted, he suggested that Jaasma must go or stay with severe restraints. Instead it was Connauton that went. Other independent directors left the company and by the end of 1967 the companies were thoroughly under the domination of a management committee consisting of Jaasma, Lampard and Van Rhyn.⁽¹⁷⁹⁾

Van Rhyn was, as early as 1962, clearly a man utterly under the domination of Jaasma.⁽¹⁸⁰⁾ Lampard, in whom those directors and shareholders who were dubious about Jaasma reposed their confidence, apparently thought that he could control Jaasma.⁽¹⁸¹⁾ Before this Inquiry, Lampard described himself as inept and innocent.⁽¹⁸²⁾ In my opinion, the first adjective is an understatement and the second an untruth.⁽¹⁸³⁾ It was my impression that Lampard succumbed to the same ambition as Jaasma. The "control" then that the reputable Lampard was to exert over

the questionable Jaasma was merely another illusion.

Thus it was that by the end of 1967 any threat to his personal position in these companies had been dissolved and Jaasma stood firmly in control, without internal threat. Henceforth Lampard, Jaasma and Van Rhyn worked as a team without apparent serious differences among them until 1971, when they were all thrown out of office by the shareholders. (184)

8. Illusion versus Reality: The External Threat

By mid-1966 the Superintendent of Insurance was concerned about the management of Cosmopolitan. (185) This posed a potential threat to the position of Jaasma. (186) With the arrival of McKinnon as Chief Examiner of the Superintendent, and the subsequent illness of the Superintendent, this threat dissolved. McKinnon came to be the officer of this branch of Government who dealt directly with Cosmopolitan. His attitude was protective, not hostile, and this threat dissolved. (187)

Also, by mid-1966 the Securities Commission had, through its investigation of Cosmo-West, become suspicious of Jaasma. In 1967 the activities of both Cosmopolitan and PAP came to their attention. (188) PAP was a private company, limited by law in the number of shareholders and from the sale of shares to the public. In 1968 the Commission began a full-scale investigation and also gained, for the first time, regulatory control over Cosmopolitan. (189)

Thus began a battle of wits with the Securities Commission. In this the Jaasma group were relatively successful. Successful, that is, in keeping the Securities Commission at bay. Meanwhile, the shareholders were told, apparently convincingly, that the lawful exercise of its function by the Alberta Securities Commission was a harrassment stemming from some vaguely motivated "hostility" on the part of Commission officers. (190)

Nevertheless the Securities Commission was, at best, only held at bay. By the end of 1969 Jaasma, Lampard, and Van Rhyn must have been fearful that, indeed, the Commission might "get" them.

Thus it was that a new, "clean" vehicle was created. (191) This was Canamera Enterprises Ltd. Significantly, it was a British Columbia company and largely outside the jurisdiction of the Alberta Securities Commission. In 1970, Jaasma and the major activities moved to British Columbia. (192) This resulted in, at least, a confused trail for the Alberta Securities Commission, But to the end they remained a real threat.

9. Maintaining the Illusion: Insurance Amalgamation

As has been mentioned, by 1969 Cosmopolitan had to either sell its business or collapse. Again Jaasma turned adversity to advantage. A desperate necessity became a wonderful opportunity!

Cosmopolitan would not merely be sold to Seaboard. PAP would, at the same time, buy Seaboard! Having failed in one insurance business, the management would succeed in another.

There are certain administrative efficiencies to be gained by merging small insurance companies. Also certain reserves are sprung free. But the real advantages were nothing compared to the illusion.

An empire would be formed. If two insurance companies were better than one, why not three or four? The patient investor was now told that a huge amalgamation was going to be put together, all to be controlled by Canamera. PAP shareholders would soon trade their shares for Canamera shares. (193) Canamera would then have a public sale of shares, an underwriting by stockbrokers, and a stock market listing. (194) The public sale would result in a huge profit to the PAP investor. (195) The ship would, after all, come in.

This promise not only sustained the patience of the investors, it resulted in substantial additional investment through 1970 and even into 1971. (196)

10. The Intrusion of Reality

The merger of even two companies is complex, involving tax, administrative and other technical complications. The Seaboard transaction was 18 months from the opening of negotiations until actual completion.

But Jaasma was in a hurry. So before the completion of the Seaboard deal the takeover of B.C. Lifewas attempted. Even before that was even near completion, the salesmen of B.C. Life were secretly moved to Seaboard. (197)

Then, for the first time, Jaasma was blocked in his ambitions. The CBH takeover was stopped by Peter Ropchan.

It should be observed that, by this time, Jaasma and Lampard had, in one sense, become successful. They had succeeded in working up to the point where they were now dealing with tough, successful, businessmen.

11. The Final Triumph of Reality

Albert Jaasma is the kind of man who, in the words of one, if he was offended by a store clerk would attempt to buy the store in order to revenge himself by firing the clerk.

And this is exactly what he then proposed to do to Peter Ropchan. Within one month of the CBH reverse and without, so far as I can determine, any previous plan, it was decided that PAP would buy control of NWL Financial and remove Peter Ropchan.

The principal motivation for this scheme seems to have been nothing more than a petulant reaction to the successful defeat of Jaasma and Lampard by Ropchan in the CBH affair. (198)

But, as mentioned, NWL Financial was a much larger firm. So far as I can determine, there was never any reasonable prospect

of success in this venture without the cooperation of Ropchan, and Ropchan refused to cooperate. (199) Jaasma claims that he relied on the word of Ropchan at a time when Ropchan refused to commit himself legally to cooperation. To deal at this level on anything other than a firm basis is utter foolishness.

It is clear that Jaasma and Lampard simply refused at this point to accept the realities. They had begun themselves to believe the illusions they had spun for so long for the benefit of the shareholders. It would appear that they had become convinced of their own invincibility.

They then proceeded to make the fatal commitments to purchase the NWL stock. They agreed to terms of payment they could not possibly meet. The history from mid-1970 until early 1971 is the story of desperate men and their close allies desperately trying to raise money to avoid the inevitable. (200)

When the collapse came, as it ultimately and necessarily did, everything was gone. Reality had triumphed over illusion!

12. Re-Creation of the Illusion

According to Jaasma and Lampard, everything that ever went wrong in any of their ventures was always the fault of someone else.

They complain about the Alberta Securities Commission. (201)

The activity of the Securities Commission will be dealt with elsewhere but basically their complaint is that it was attempting to impede them, i.e. to perform its lawful function.

They complain about Allarco. (202) Allarco should have bailed them out. This complaint is the complaint of a man who, having jumped into the sea, blames a bystander for his drowning because the bystander failed to risk his own life to save him.

They complain about Peter Ropchan. (203) That he did beat them badly in business deals is indisputable. If they were sheep led to slaughter, a not inaccurate description, they were sheep who thought they were wolves and who had for some time been guilty of wolf-like rapacity. There is some justice then in their end, albeit mixed with sympathy for those who trusted them.

13. Victims and Victimizers

In this history, an attempt should be made to make a distinction between victims and victimizers.

Albert Jaasma, in particular, claims to be a victim. (204) But, according to the experts brought in by the Inquiry, his actual investment in any of these enterprises was more illusory than real! (205) And, while he lost what little investment he ever had, he also lived sumptuously at the expense of others for almost a decade. (206)

Below the management group of Jaasma, Van Rhyn and Lampard,

There was a second echelon of people who were, in the main, life insurance salesmen. These men themselves had major investments in this enterprise and, in addition to the belief in huge profits to come, had been offered high office in the empire under construction. (207)

But these were relatively sophisticated men and fairly close to the scene. They were quite able to make an independent investigation of facts. (208) Several of them, including some directors, were aware of at least some of the improprieties involved, such as the incredibly duplicitous trick played upon Mr. Jack Ferris. (209) Yet they did nothing. (210) As one director said, "Nobody had the stomach for a fight with Albert Jaasma." (121)

It was well within the capacity of these men to separate illusion from reality. It would not be accurate to describe this group as victims of anything other than their own weakness.

The real victims were the investors who had no part whatever in the management of the company. But it should be observed that the basic appeal to these investors was the prospect of great profit at little risk. They were the victims then, of their own avarice, ignorance, and misplaced trust, or, in the early days, of local pride.

Not infrequently the Inquiry was told by an investor that he had been warned against investment in PAP, warned against

believing statements made to him, and warned against Albert Jaasma as being perhaps unreliable; but that he had put aside all of these warnings and succumbed. (212) In this respect I can add nothing to the observation earlier made by Mr. P. T. Barnum. (213)

This history shows that the small investor needs *easy* access to independent professional advice so as to make intelligent investment decisions. This advice must be professional, i.e. from a person who has adequate training in all aspects of investment and who is subject to the discipline of established ethical standards. This advice must also be independent, i.e. from a person whose income derives from those who seek his advice and not from those who seek to sell securities. In my respectful opinion, no existing occupation or profession meets these qualifications, either because they are not in fact independent or they are not adequately trained in this respect, or because, for some reason, they are not easily accessible to the small investor. (214)

This history also shows that even if such advice was available, there would likely be many investors who would ignore it.

In conclusion, it should be said that the existing legal rights of shareholders and directors, if exercised, are sufficient to protect shareholders from abuses by officers. At any time, it was within the power of shareholders or directors to remove Jaasma, Van Rhyn and Lampard from office. But they failed to do this until 1971. In no way can it be said that this failure was the responsibility of anyone but the shareholders themselves, and it certainly was not the responsibility of Government.

CHAPTER III

ON THE SUBJECT OF WHETHER CERTAIN NAMED
REGULATORY BODIES PROPERLY CARRIED OUT THE
DUTIES AND OBLIGATIONS IMPOSED UPON THEM BY
LEGISLATION OR REGULATION

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Introduction

I am charged to inquire into and report on:

"...b) the actions of the Alberta Securities Commission, the office of the Superintendent of Insurance, the office of the Director of Trust Companies, the Companies Branch or any other branch or department of the Government of the Province of Alberta (hereinafter called the 'regulatory bodies') with respect to:

- i) the business affairs, including the raising of capital of The Cosmopolitan Life Assurance Company and PAP Holdings Ltd. or either of them; and
 - ii) business dealings any other individual or company had with either The Cosmopolitan Life Assurance Company or PAP Holdings Ltd. materially adversely affecting the financial circumstances of The Cosmopolitan Life Assurance Company and PAP Holdings Ltd. or either of them;
 - iii) whether the said regulatory bodies properly carried out the duties and obligations imposed upon them by legislation or regulation.
- c) whether the said regulatory bodies properly carried out the duties and obligations imposed upon them by legislation or regulation."

I have found it material to inquire into the actions of the Department of the Attorney-General and Honourable E. W. Hinman, M.L.A., in addition to the listed agencies and officers. I will therefore deal, in turn, with Honourable E. W. Hinman, M.L.A., the office of the Superintendent of Insurance, the Securities Commission, the Department

of the Attorney-General, the Director of Trust Companies, and the Companies Branch.

I feel there is a need, however, for a prefatory remark on the subject of Ministerial responsibility.

It will be noted that there is relatively little *direct* and *personal* involvement by Ministers of the Crown in the matters I am about to review, and, parenthetically, it was for that reason that there was no perceived need to call them as witnesses although, of course, they were free to appear voluntarily.

In a modern complex society, a Minister must rely on the assistance of subordinate officers, and cannot possibly be personally involved in all the activities of these officers. But he remains politically accountable for their actions.

In the "Political Quarterly" for July-September, 1972, R.J.S.

Baker comments:

"Maximum delegation of particular functions does not imply abrogation of responsibility. It must on the contrary be interwoven with practical means of maintaining overall control and feedback, both general and particular - the latter normally by sample. Anyone in charge of a large organization ... delegates a very high percentage of management functions to subordinates, while, nevertheless, retaining or accepting responsibility for failures as much as credit for successes."

An aspect of the parliamentary tradition is that such responsibility, or accountability, by an elected person always obtains, and, where significant errors have been made, is satisfied by resignation. Since

all of the Ministers involved in the matters under review are no longer members of the Government any further comment would be trite.

But what is more germane is the apparent erosion of the principle of Ministerial responsibility by legislation giving members of the public service, and not Cabinet officers, the ultimate responsibility for the administration of specific statutes. This, in my view, is a most lamentable trend.

Baker adds, in commenting on a proposal for just such a change to the insurance legislation in England,

"If Ministers are not capable of controlling the system of controlling insurance companies, what functions of government are they capable of controlling? If civil servants and not Ministers are responsible for certain functions of government departments, to whom are they responsible and through what channels and what are the sanctions? May they accept personal praise as well as personal blame?"

In sum, then, I confess to a bias: I hold the view that a Government elected by the people should accept its mandate to govern, and not seek to delegate that mandate to others. Illustrations of this view will appear throughout this chapter.

The Office of the Superintendent of Insurance

The Duties of the Superintendent

Under the *Insurance Act* (1955 R.S.A. 159, now 1970 R.S.A. 187) the following duties of the Superintendent of Insurance are enumerated:

"The Superintendent *shall* act under the instructions of the Minister ..." (s. 3 (2), now s.3 (2)).

NOTE:

Page Nos. 65, 67 and 67 are NOT missing.

Typographical error in numbering.

"The Superintendent shall have general supervision of the business of insurance within the Province and shall ensure that the laws relating to the conduct thereof are enforced and obeyed, and shall examine and report to the Minister from time to time upon all matters connected with insurance." (s.3 (3) now s.3 (3)).

The Superintendent shall keep certain books and records. (s.9 now s.9).

The Superintendent shall have the duty of determining the right of any insurer to be licensed. (s.11, now s.11).

"At least annually the Superintendent shall visit personally or cause a duly qualified member of his staff or other person authorized by the Superintendent to visit, the head office or chief office in the Province of every licensed insurer ... and he shall verify the statements of the condition and affairs of each insurer filed under this Act, and make such inquiries as are necessary to ascertain its condition and ability to provide for the payment of its contracts as they mature and whether or not it has complied with all the provisions of this Act applicable to its transactions and the Superintendent shall report thereon to the Minister as to all matters requiring his attention and decision." (1962 s.a., cap.36, s.2 now s.19 (1)).

"The Superintendent *shall* prepare for the Minister from the statements filed by the insurers and from any inspection or inquiries made, an annual report, showing particulars of the business of each insurer as ascertained from the statement, inspection, and inquiries ..." (s. 20 now s. 20).

In this report the Superintendent "*shall* allow as assets only such of the investments of the several insurers as are authorized by this Act or by their Acts of Incorporation." (s.21 (1) now s.21 (1)).

In his report the Superintendent "*Shall* make all necessary corrections in the annual statements made by the insurers as provided by this Act ..." (s.21 (2)).

The Superintendent *shall* not issue a license to an insurer until he is satisfied that all of the requirements of the Act are met and the incorporation expenses paid and that there is no change in the directors of the company since its actual incorporation. (s.38 and 38 (a), now s. 38 and 39).

"If the Superintendent, upon examination, or from annual statements, or upon other evidence, finds that the assets of any insurer are insufficient to justify the continuance of the insurer in business or to provide

proper security to persons effecting insurance with the insurer in the province or the insurer has failed to comply with any provision of law, or with the act of instruments of incorporation or association of the insurer, he *shall* so report to the Minister." (s. 42 (1), now s.43 (1)).

In the case of a life insurer, if ever the liabilities of the company including policyholders and the paid up capital required by the Act exceed its assets, "The assets of the insurer shall be deemed insufficient to justify the continuance of the insurer in business within the meaning of s.42 (1) and the Superintendent *shall* so report to the Minister." (s. 42 (2) as amended by 1964 s.a. cap. 36, s.3, now s. 43 (2)).

"The Superintendent *shall* report to the Minister any violation of any of the provisions of this Act by an insurer ..." (s. 47 (1), now s. 48 (1)).

Other provisions in the Act give the Minister or the Lieutenant-Governor-in-Council wide powers to grant, suspend or cancel the license of an insurer and take civil action against insurers. As can be seen by the review of the duties of the Superintendent under the Act, his role is to keep the Minister informed. The Superintendent is given wide powers to require insurers to supply him with the needed information. But it is the Minister, and not the Superintendent, who has the power of decision. This is correct even

in respect of the granting of a license. While in the first instance that is to be done by the Superintendent there is a power of appeal to the Minister.

It is to be noted also that the various duties of the Superintendent are mandatory, i.e., he is under a statutory obligation to report on various matters to the Minister and this obligation is not subject to any discretion on his part.

Also, it is clear that the purpose of the Act is to govern the relationship between insurers and insured so as to protect insured persons.

Until amendments in 1967 * there was nothing in the Act dealing with the relationship between an insurer and an investor in an insurer except the provisions relating to share calls. Also, the only apparent grounds for the suspension or cancellation of a license are the breach of a provision of the Act by an insurer or where the Minister is satisfied that the insurer can no longer meet its obligations to policyholders.

That this was the intention of the Legislature in this Act is made doubly clear by s. 104 (now s. 110) making it an offence

* Certain 1967 amendments dealt with insider trading in insurance companies, but the administration of these provisions went to the Securities Commission and not the Superintendent or his Minister. These provisions might then have been more appropriately placed in the *Securities Act* or the *Companies Act*.

for any person, orally or in writing to represent that the fact of the existence of supervision or regulation of business of the insurer by law is a warranty or guarantee of the financial standing of the insurer.

Concerning an Allegation of a Lack of Direction to the Superintendent

There is a valid question how strictly the Superintendent should interpret his mandate to examine an insurer. How closely should he monitor its activities? I do note that the large and unforeseen number of insurers licensed after 1962 combined with the difficulties that several new licensees including Cosmopolitan, soon encountered, caught the then Superintendent, understaffed.

Also, the Superintendent was of the opinion, frequently expressed, that he was supervising the building of an industry and he conceived that his role was not merely to examine and report but also to advise. Again, the question of advice by the Superintendent and his officers will be discussed elsewhere. But even if there was a mandate to advise, it was in addition to, not in replacement of, the mandate to examine and report.

MacPhee said that he was involved in prolonged dispute with his superiors over the proper role of the government in the supervision of the insurance industry. He said that the two Deputy Ministers during the period under review felt that the obligation to survive rested solely with the company, whereas MacPhee "felt that these companies should be encouraged and supported once the government decided to give them a breath of life." (p. 2302). In a memorandum of a conversation between

himself and the then Deputy Minister of August 25, 1966, he quotes the Deputy Minister as having said that he "failed to convince him (the Deputy Minister) that the rights of shareholders should ever have been any concern of ours (the Department.)" (Ex. 230). This attitude no doubt reflected the policy of the government of the day expressed to the Deputy Superintendent of Insurance by the then Minister on September 4, 1962 that the government was opposed to "too much regimentation of private industry." (Ex. 106).

There is no evidence that this policy ever changed, but rather it was consistently re-asserted thereafter (see Ex. 104 of March 23, 1971). The clear duty of the Superintendent was to follow this policy and fulfill his responsibilities under the Act as so construed. It was the clear duty of the Minister to require either adherence to this policy or a resignation. It would appear that Mr. MacPhee did attempt to follow these directions after mid-1966, while at the same time pressing, as he had the right to do, for a change of policy.

In 1967, Mr. William McKinnon became Chief Examiner and Auditor of the Office of the Superintendent and thereafter seems to have been the officer of government delegated to deal with Cosmopolitan. Indeed, not long after, Mr. MacPhee became ill and obtained an extensive leave of absence prior to his retirement.

McKinnon swore that from the time he entered the public service he sought a "specific policy statement" (p.721). As late

as October, 1970 he complained of a lack of "directions from the government" (Ex. 114). But the statements of the Deputy quoted above were *quite* specific.

Not only was it clear that he was to make reports rather than meddle with the internal management of insurance companies but also, on February 15, 1968, he, through the Superintendent, was directed by the Deputy that:

"If it appears, during the course of an examination that there are other matters that should be looked into in connection with the affairs of the company or its senior officers or directors, it is our clear duty to report our findings or suspicions to the proper authority. This would in most cases be to the Securities Commission or the Department of the Attorney-General." (Ex. 304).

Notwithstanding all this, the Superintendent quotes the Deputy as having made this criticism during the first week of October, 1970:

"We seem to be working in their offices almost day and night, that we were doing a lot of accounting but not doing any report writing, and that he felt ... that we should be getting reports to the Minister ..." (p. 2342)

Under the circumstances this was a valid criticism. Yet after being told to "get reports to the Minister," McKinnon only prepares a plaintive memorandum (Ex. 114) confirming instructions to withdraw "... any guidance I may have been giving these companies for their survival ..." and asking for directions as to what to do!

In my opinion, the real complaint of Mr. McKinnon was not that

he lacked direction but that he personally disliked the directions he had received.

The Exercise of His Duties by the Superintendent: Generally

The Cosmopolitan Life Assurance Company was licensed by the Superintendent on June 12, 1963. The Superintendent at that time was John Alexander MacPhee, who remained in that office until his retirement February 4, 1972. It was his evidence that, from the time of its licensing until the time of his retirement, there was never "a statutory report made of the nature envisaged in the Insurance Act." (p. 2347).

His reason is that such a report would require the Minister to "take the company out of the control of the shareholders." (p. 2347). Yet, as I read the *Act*, the Minister in all circumstances where the Superintendent shall report to him, has a discretion and, in some cases, cannot act without first giving the insurer an opportunity to at least make a submission to the Minister.

By taking this approach, Mr. MacPhee exposes himself to the criticism that he exercised a discretion not given to him by the *Act* and prevented the Minister from exercising a discretion given to him by the *Act*.

I should add, however, that in my opinion, Mr. MacPhee was a dedicated public servant and any error in this regard was judgmental and did not derive from any lack of diligence, honesty

or good faith.

Furthermore, it would appear that to mid-1967 he and his officers did in fact keep the Deputy Minister informally or formally notified. I should observe, also, that there are no grounds for criticism of the work of the Deputy Superintendent, Mr. Fisher. After McKinnon came to the public service and MacPhee became ill, it would appear that the Department relied primarily upon McKinnon to discharge the responsibilities of the Superintendent with respect to Cosmopolitan. MacPhee, fairly, should have to bear only minimally the weight of any criticism of actions taken or not taken by his office after the arrival of McKinnon.

The Exercise of the Duties of the Superintendent: Specifically

1. The Original Licensing

I have no criticism of the original requirements of Cosmopolitan at the time of its licensing. These seem to have been fair and adequate.

2. 1963 to 1965

The Superintendent first called for a close examination of the affairs of Cosmopolitan after the close of its second full year of operation, December 31, 1965. As at the end of the previous year Cosmopolitan only had a total of 259 policies in force, this does not seem unreasonable, particularly as he had the benefit of the results of a British Columbia-commissioned study (Ex. 105).

The actuary informally reported in June, 1966 to the Superintendent and the Deputy that he had found many serious administrative and management deficiencies. A decision was made to follow the advice of the actuary that, at least in the first instance, the Superintendent ought to give the company his diagnosis and leave the cure to management. A meeting was held with Connauton the board chairman, and Jaasma, the president. While the Superintendent and his Deputy had originally planned to meet with the full board of directors, they yielded to Connauton's plea to first give management an opportunity to put its house in order. This was, at that time, not an unreasonable request. The matter, then, was left for the time being. At about this time rumour was heard of an oust-Jaasma effort. It should be noted that a major criticism of the company by the consulting actuary was the role of Albert Jaasma.

3. McKinnon: 1967

By April, 1967, Connauton had failed in his efforts and was driven from office, leaving Jaasma in complete control. The Superintendent then did meet with the Board and laid out his criticisms. It was left with McKinnon to monitor the situation thereafter. It is clear that McKinnon was well aware of the situation (Ex.333) and, at least at the outset, was concerned.

McKinnon reasonably could only have viewed the continued involvement with Jaasma with suspicion. Yet, I think it is fair to say that from some time in 1967 and thereafter McKinnon's attitude toward Jaasma could only be described

as either protective or at least remarkably unsuspicious.*

It was at this time, McKinnon acknowledges that Jaasma offered and he accepted a financial advantage which McKinnon, but not Jaasma, described as a loan.

My suggestion of an unsatisfactory attitude is, I appreciate, very serious and should be supported:

(a) McKinnon's manner of achieving improvement of the administrative problems of Cosmopolitan was to actually go to its office and give advice and other managerial assistance, which seems remarkably paternalistic.

(b) Instead of the informal exchange of information as in the past, McKinnon demanded that the actuarial study be prepared in the most formal way, notwithstanding the protest (Ex. 112 - letter of March 29, 1965) of the actuary that this was not what was needed and would result in delay. In fact, the actuarial study for the year ended 1966 was not, as a result, filed with the Superintendent until February 5, 1969! (Ex. 325).

(c) There is the curious affair of the Marien claim. Marien was a disgruntled stockholder who had sued

* At my request, after the public hearing Commission counsel reviewed all of the files of the Superintendent of Insurance for the period 1967-69 and reported to me that he could find nothing therein to contradict this statement.

Jaasma. He alleges, and I believe him, that McKinnon personally contacted him to encourage him to settle his suit. Also, his own file notes indicate that, when meeting with Marien's counsel, he apparently attempted to intimidate him. He quotes himself as asking Mr. G. H. Steer, Q.C., if "he had discussed with him his clients' awareness of any responsibilities connected with any directorship that they might get involved with." (Ex.111 - memo of May 16).

(d) There is the curious affair of Dezwart, another disgruntled claimant in 1967. After his inquiry Mr. McKinnon reported (Ex.129 - memo of December 6) that Dezwart was "not only lending his securities against his debt to Mr. Jaasma, but was also currying favour from Jaasma, " a wholesale acceptance of the Jaasma position which contrasts somewhat with the view of Mr. Hales, who subsequently inquired into the same matter (Ex. 255).

(e) On December 1, 1967 McKinnon suggested to the Deputy that "it would seem necessary that Cosmopolitan have a new (share) issue cleared (for public sale) as soon as possible (by the Securities Commission)." (Ex. 111). While this lengthy memorandum is written in a rather elliptical style, it seems that he was advocating that Cosmopolitan be allowed to go to the public with a

new offering, and that, in effect, the previous failings of Cosmopolitan be overlooked. It is in this context that he predicts a public investigation. He says "...if this (clearing a public offering) is not done we may find ourselves in the position of receiving awkward enquiries ... and may also precipitate a public investigation ...". In this context this prediction can be construed not as a warning that firm policing is necessary, as McKinnon subsequently suggested, but rather almost a threat to the government of dire consequences if it fails to allow a public offering. The reaction of the Deputy (Ex. 111 - memo of December 14) that:

"there was now no reason why the usual rules governing security issues should not apply strictly to insurance company offerings, and in fact, there would appear to be very sound reasons why they should be made to apply ..."

seems in the circumstances eminently sound.

It is difficult in this circumstance to understand how McKinnon could say that he "...attempted vigorously to bring this company before the authorities. They completely side-stepped me at all times" (p.3350).

(f) On October 31, 1967 Cosmopolitan acquired shares in Highland Acceptance Corporation Ltd., a transaction that offended s.91 (15) (c) of the Act (Ex. 304, E 7). Jaasma says (Ex. 305) that McKinnon approved this acquisition. At the 1968 annual meeting, in response to

a query, Lampard said, according to the minutes, that "the approval and consent of the government was obtained before the purchase was made." (Ex. 112 - Minute dated March 20, 1968). This minute is on McKinnon's file, yet no protest or contradiction is there recorded and no report was made to the Minister, although the company was subsequently directed to divest this interest.

(g) In responding to inquiries from members of the public about Cosmopolitan, McKinnon is indiscreet and comes perilously close on at least one occasion to himself offending s. 104 (now s. 110). (See Ex. 334 and particularly the last paragraph of the letter of April 1, 1968). I contrast this with an earlier letter of Mr. Fisher in that exhibit (July 14, 1966) which is a model of prudence.

4. McKinnon - 1969

On February 3, 1969 the report of the actuary was received. The following pertinent comments were made:

(a) Reference is made to the activities of associated companies (PAP, etc.) and the possibility of company assets being used as security for borrowings by the directors for their benefit and therefore that " ... all liquid securities of (Cosmopolitan) should be taken into custody to remain in custody until the Superintendent is completely satisfied as to the financial position of

the Company."

In fact, this recommendation was not acted upon. And the prediction of the actuary came true. In December, 1969, \$240,000 of liquid assets of Cosmopolitan went to PAP in a bumper operation involving Allarco Developments who first borrowed the money from Cosmopolitan and then loaned it to PAP (p. 2374). The penultimate risk here lay with Allarco, who ultimately repaid the loan. But the point is that the company did do what the actuary feared it would do and McKinnon took no preventative steps as recommended.

Also, of course, Cosmopolitan later pledged its Seaboard shares and lost them. McKinnon never took custody of these shares. He merely received an acknowledgement that they had been lodged for safekeeping at a place where they could be removed by the Cosmopolitan officers (Ex. 124).

Thus, the sound advice of the actuary was ignored to the peril of the Cosmopolitan shareholders, if not policyholders.

(b) The actuary reported that the company was heading for insolvency and recommended that the Superintendent require the company to "set goals for expenses and production" and "exercise surveillance over the operation

to ensure that these goals are kept to." Neither of these apparently done.

(c) The actuary recommended merger as the penultimate solution and in fact talks to that end began in early 1969. Yet, in late 1969, when the deal with Seaboard was near completion, McKinnon approved a new form of policy - the equity-linked plan which so soon thereafter came to grief. Yet, McKinnon says that in April, 1970 Cosmopolitan agreed to stop writing new business (p. 706). It is incomprehensible to me why a new type of policy would be permitted at such a stage in the history of a company. As late as February, 1970, he comments (Ex. 335) on how this program is "getting under way"!

Further, he says his "greatest concern" (p. 719) was that Cosmopolitan was poorly managed (p. 720) and this is why he got so closely involved with management. Yet he says he was not so closely involved as to become aware that the segregated funds under these policies were not being properly handled from the outset !

If, on the other hand, McKinnon was *not* monitoring the equity fund policies, how could he say that the policyholders were never in jeopardy? For all he knew these new policies were being sold at such a level as to incur risks to the company in excess of available assets.

(d) The actuary again noted, as had been noted since 1965, that Albert Jaasma was the major insurance seller as well as the principal managerial officer, that the lapse rate was high and that Jaasma was involved in a conflict. Again, from the arrival of McKinnon, nothing was said or done about this. *

5. McKinnon: October, 1970

It is correct, as the Deputy would have said, that the abortive transaction of October 25, 1970 between Cosmopolitan and Canamera was not a matter of direct concern to the Superintendent. But, it was also true that McKinnon had, as mentioned, received clear instructions to report suspicious circumstances to the proper authorities.

On October 6, Jaasma visited with McKinnon and discussed with him the possibility, according to McKinnon, of a loan by Cosmopolitan to Canamera, which McKinnon says he discouraged. (Ex. 114). By this time the major insurance business of Cosmopolitan had been sold and delivered and there were discussions about sale of the charter. Only the equity-linked plans remained in the company. There was no need for Cosmopolitan to borrow money, except to assist Canamera.

On October 21, McKinnon met with G. Arnell, solicitor

* Following the public hearings I had commission counsel review all of the files of the Superintendent and he reported nothing could be found in the files after July 1967 to contradict this statement.

of Northwest Trust and discussed a proposed borrowing by Cosmopolitan from Northwest Trust (Ex. 114), which he again says he discouraged. At this point, even if he knew no more than that stated, the most naive person must reasonably have suspected what was up. Mr. McKinnon, however, was remarkably unsuspicious. Had he at the time reported any of these facts to the Securities Commission, it would have found them most useful as they were in the midst of an inquiry into the affairs of Canamera and PAP and, indeed were in the midst of interrogations to discover what was going on. But Mr. McKinnon said nothing.

5. Summary of Conclusions

Failing to Report

MacPhee once said that " ... in most cases where solvency has been a matter of concern, more harm is done by failing to take action than by acting too hastily ..." (Ex. 233). It would appear he failed to follow his own sound advice. In this it would appear that he was influenced largely by McKinnon, who in protesting an ambition to protect the shareholders by allowing the company to survive, stood by while the company was destroyed. Even on October 9, 1970, Mr. McKinnon acknowledged that Cosmopolitan "should be reported to the Minister"(Ex. 114). Yet it was not done.

In my opinion, the office of the Superintendent failed, in 1969 and again in 1970, in its clear statutory duty to report Cosmopolitan to the Minister.

In my opinion, Mr. McKinnon failed from 1968 to discharge the clear direction of his superiors to report "our findings or suspicions to the proper authorities."

In conclusion, may I say that had the policyholders of Cosmopolitan lost any money, which fortunately they did not, I would have been inclined to recommend government compensation to them. This would not, however, be appropriate for shareholder losses as it was not the function of the Superintendent to protect the interests of shareholders.

The Securities Commission

Complaints by Officers of Cosmopolitan and PAP

1. The Order of October 23, 1962

On October 23, 1962 Mr. H. Rose, the then chairman of the Securities Commission made an order denying Albert Jaasma the exemption under s. 20 (2) (1) of the *Securities Act, 1955* to trade in the securities of a private company issued by the private company even where the securities are not offered for sale to the public.

In my opinion, the chairman had the power to do such an act and, having reviewed his ruling and the material he relied upon in support thereof, it is my opinion that he was justified in so ruling. In my opinion this was a proper exercise of his powers under the *Act*.

Also, I do not doubt the evidence of Mr. Klapceki that he personally served a copy of the order on Mr. Jaasma on October 24, 1962.

2. Refusal to Renew the License of Cosmo-West Securities Limited

In 1966, the Securities Commission would not renew the license of Cosmo-West Securities Limited (Cosmo-West), as a stockbroker. I have reviewed the reasons given by Mr. Rose to the company for this action and I have reviewed the material upon which the Commission relied and I am of the opinion that this act was a proper exercise of its powers under the Act and the material before it not only justified but required it to so act. I note from the file that Mr. Rose left the door open for a renewal of the license if the matters complained of were attended to, but that this was never followed up by the company. Under the circumstances one can have no criticism of this action.

3. The Role of the Securities Commission in the Columbia Beneficial Holdings Ltd. Transactions

The history of the transactions of PAP involving Columbia Beneficial Holdings Ltd. (CBH) early in 1970 have been set forth in Chapter II. These events require some further comment, however, because the accusation was made by various persons that the failure of PAP was as a direct result of the action of the Commission.

There were two different allegations.

(a) Albert Jaasma alleges that the Director of the Commission

suggested that any takeover of CBH by PAP would necessarily have to involve the removal from office of certain directors of CBH. He claimed this led to the problems which PAP encountered.

The Director of the Commission, Mr. Rootes, denies ever taking such a position.

I have read the letter of January 29, 1970 (Ex. 261) from the then solicitor of PAP to the Commission. This, in my opinion, clearly indicates that the suggestion for the removal of these persons came, not from the Commission, but from PAP. I quote page 2 of this letter:

"To make matters worse, a number of people in the escrow group (other than Heath) are actively pursuing a program to regain control of management of the company. Most involved are Reid, Stucki, Rowberry and Peart, although the others have also been approached ... some of these individuals have already contacted key sales personnel of the insurance company to announce their takeover of management. Suffice it to say, the escrow group concerned has not shown any new evidence which would justify confidence in their 'ability' ... in my view the shareholders could only be harmed by allowing this group to regain control of the company."

Thus, it is clear that the initiative lay with PAP and not the Commission, whether or not the director might have agreed with the suggestion.

I should say in passing that I take it that the letter of January 29, 1970 was written, as the author stated, on

behalf of his clients. Indeed, as he says at the end of his letter:

"In view of my non-participation in the direct management of any of the companies concerned and because of my peculiar status as a special legal consultant (rather than usually retained solicitor) I am unable to guarantee the accuracy of events and information reported to me by others."

Thus, he makes it extremely clear that what he is saying is on behalf of his clients and not in his own right. To the extent that Albert Jaasma contradicted this, I do not believe him.

(b) The second accusation arises in respect of Commission consent to the transfer of certain escrow shares allegedly purchased by PAP. According to the officers of PAP, they negotiated for the purchase of 204,000 escrow shares from Messrs. Reid, Peart, Heath and Murdock. In order to understand all this, it is necessary to go into some detail. The escrow agreement in question is strangely worded and the relevant portion reads:

"The shares are to be held by the Trustee until such time as the release of all or any of the said shares is consented to in writing by the Ontario Securities Commission, and the Superintendent of Brokers for the Province of British Columbia. The Superintendent of Brokers for the Province of British Columbia has agreed that he will not release the said escrow until such time as he is satisfied that the Alberta Securities Commission are in agreement with such release. The said shares cannot be sold, dealt with, assigned or transferred in any manner whatsoever at any time except with the written consent of the said relevant authorities." (Ex. 30).

As I understand the situation, release from escrow was not sought. Rather, transfer within escrow was all that was intended, and consent to that was all that was requested.

A difficult question of interpretation arises as to whose consent is required for a transfer within escrow, as opposed to a release from escrow. * At any rate, PAP clearly was of the opinion that the Alberta Securities Commission was one of the "relevant authorities" whose consent was required, because they sought its consent. At the outset the Alberta Securities Commission was of the same opinion (Ex. 261, Doc. 2). And, on April 30, 1970, the Director gave consent. On July 27 he withdrew that consent.

But, on May 8, 1970 (Ex. 23) NWL made, and the officers of CBH accepted, an offer to purchase all of the unissued rating stock of CBH. This represented six times the number of shares that PAP was negotiating for, and only 63,302 shares short of absolute control of the company! NWL also entered into an alliance with certain directors in CBH, including the president, Mr. Chambers. This purchase was approved by the British Columbia Superintendent of Brokers on

* The agreement provides that such consent must be obtained from the "said relevant authorities." Clearly these relevant authorities included the Ontario Securities Commission and the British Columbia Superintendent of Brokers. It is not so clear whether the Alberta Securities Commission, which is referred to in the escrow provision only indirectly, are included in the "said relevant authorities." It would be my view, however, that the Alberta Commission was one of the "relevant authorities."

May 11, 1970 (Ex. 24) subject to NWL proceeding to making a takeover bid under the *Securities Act* for all the shares of CBH. This was done. (Ex. 27).

Even if CBH entered into this transaction with NWL to thwart the efforts of PAP, it was perfectly free to do so.

Meanwhile, the annual meeting of CBH was set for June 17, 1970. At that meeting NWL voted its newly acquired stock and took management control of CBH.

PAP unsuccessfully sought an injunction to prevent CBH from having this meeting. One reason why it was unsuccessful was that the British Columbia Superintendent of Brokers had, at that time, withdrawn his consent to the transfers to PAP. (Ex. 29). But, at that moment, the Alberta consent of April 30 was still in effect, and the PAP suit did not fail by reason of any action on the part of the Alberta Commission.

Even at that time (June) at least one alleged vendor was apparently trying to back out of any agreement with PAP (Ex. 29). In any event, after the June 17 meeting, it is difficult to see how PAP could hope ever to get control of CBH. Thus, the NWL-CBH deal was the effective act in preventing the attempted takeover of CBH by PAP, and not any action on the part of the Alberta Securities Commission. The war was over, so to speak, for PAP on June 17, 1970, one month before the Alberta Commission withdrew consent.

Thus, in no way can it be said that the action of the Alberta Securities Commission prevented PAP from taking control of CBH.

At best, its actions may have prevented PAP from acquiring title to the escrow shares. But, if PAP was entitled to these shares, and if the vendors were in breach of contract, this would be properly resolved by civil litigation. There is nothing before me to indicate that any suit was ever prosecuted by PAP, let alone a suit prosecuted and *lost* by reason of the action of the Alberta Securities Commission.

Thus, I can find absolutely no evidence that any failure on the part of the Alberta Securities Commission caused damage to PAP.

Therefore, while one can fairly criticize* the Securities Commission for having failed to state in its letter of July 27, 1970 withdrawing consent that it was doing so because it had come to the conclusion that it had no jurisdiction to

* In a memorandum supplied to the Attorney-General on March 20, 1973 the Director said that this withdrawal was sent because "it was the Chairman's conclusion which I thoroughly agreed with that our consent was not required in any case" and "my real reason was as stated above, that I felt that my consent was not required."

This being the case, the form of the letter was, in my view, inappropriate. He gave no reason for his actions in the letter withdrawing consent. To withdraw consent without explanation after first giving consent must have left others assuming that the consent had been withdrawn for some reason other than a jurisdictional one.

grant or withdraw consent, it is also true that this in no way worked any harm upon PAP.

This lengthy review was made necessary because much has been made of this before and during the Inquiry. This attack on the Securities Commission was based on the use of documents out of context and a distortion of the chronology of the events in question.

4. Investigation Orders

The Commission made several investigation orders under s.27 of the *Securities Act* in respect of PAP and related companies. As a result several investigations were carried out, including an extensive investigation by Mr. Stephen Hale, C.A.

While these investigations were being carried on, the officers of these companies criticized the Commission for "harrassment" and questioned the motives of the officers of the Commission who had recommended such orders to the Commission. These accusations were repeated before the Inquiry.

The evidence upon which the Commission relied to make these orders was, in my opinion, sufficient to justify the making of such an order, and these orders were lawfully made and these investigations were lawfully conducted.

In my opinion, these attacks were merely defences raised by the people under investigation to allay concern expressed by

shareholders who had heard about the investigation.

There is a record of complaints having been received (Ex. 262) of indiscreet remarks by investigators and these complaints were repeated by some witnesses before me. However, I have not felt that these allegations were sufficiently significant to call for inquiry.

5. The Prosecution of Donogo Holdings Limited and PAP Holdings Ltd.

I have reviewed the files of the Commission in connection with these prosecutions. In my opinion, in each case there were reasonable grounds to suspect that an offence had been committed under the *Securities Act*. This does not mean, of course, that I in any way disagree with the decisions of the learned judges who disposed of these charges. The duty of the Crown is not to lay an information unless there are reasonable grounds to believe that an offence has been committed. The duty of a judge is not to convict unless he is convinced of guilt beyond any reasonable doubt. Thus, to say that the Crown officers properly acted is not in any way to derogate from the ultimate decision in each case.

6. Insurance Companies Subject to the *Securities Act*.

I heard some criticism of the 1967 legislation removing the exemption of insurance companies from the application of the *Securities Act*. This criticism is without merit. The appropriate response was made by the Deputy Provincial Secretary in 1967, when he said:

"There was now no reason why the usual rules governing securities issues should not apply strictly to insurance company offerings and in fact, there would appear to be very sound reasons why they should be made to apply ..." (Ex. 111).

Jaasma *seems* to say that the Commission did not understand the insurance industry.* But what the Commission did understand is the need for fair dealing, full disclosure, and the avoidance of fraud and conflicts of interest. They have no place in any industry.

There are some unique characteristics to the insurance industry which the Commission must and did appreciate. Also, there is a need for consultation between the Commission and the Superintendent of Insurance which the Commission must and did appreciate.

In my opinion, none of the actions of the Commission stemmed from any misunderstanding of the insurance industry and any such criticism is without merit.

7. Summary

If in any way the actions of the Securities Commission deleteriously affected the plans of the promoters of Cosmopolitan and PAP, this occurred only because the Commission was attempting to fulfill its statutory duty to regulate the securities market.

* His precise words are: "then the insurance companies were removed as capital responsibilities to the Securities Commission, who had not a precise knowledge of the situation where the insurance industry was involved in, and for the outsiders made up judgment what was not correct, I think that had been the major cause of the catastrophe that we were involved in." (p. 175).

As detailed in Chapter II, the fulfilment of this duty inevitably led to conflict with the activities of Jaasma, Lampard and the others.

The Failure of the Securities Act

1. The Apparent Failure to Protect Investors

The intended purpose of the *Securities Act* was to protect the investing public. But the investing public lost over \$5,000,000.00 in Cosmopolitan and PAP and allied companies! The history in Chapter II would indicate that this loss was occasioned at least in part by practices that the *Securities Act* was designed to stop. Thus, at first sight, it would appear that the *Act*, and the structures established thereunder, were a failure. But, this proposition, in my view, requires careful and close investigation.

2. The Dual Role

An examination of the *Act* indicates that a dual role was intended for the Commission. The first was to provide a system of *a priori* regulation of the sale of securities by providing a system of licensing and registration. This was to prevent mischief in the marketplace before it occurs. The second was investigative, i.e., the *ex post facto* investigation of improper activities after they occurred.

3. The Failure: Specifics

(a) During the period 1962 to 1967, Cosmopolitan raised approximately \$2,000,000.00 from the public.

From 1962 to 1967 Cosmopolitan was exempt from the application of the provision of the *Act*. (*Securities Act*, 1955, R.S.A. 64, s.20 (1) (c) (i)). However, under s.20 (3) the Commission itself had the power to lift such exemption when, in its opinion, such action "is necessary in the public interest." In my view, at the time when Cosmopolitan established a subscription price of \$51.50 and after the Commission had become aware of the activities of Cosmo-West Securities Ltd., it could be fairly said that the removal of such exemption was "necessary in the public interest." However, at no time did the Securities Commission make such an order. When, in 1967, the exemption from the application of the *Act* was lifted, it was done by the Legislature.

(b) During the period 1966 to 1970 PAP raised over \$2,000,000.00. During this period it also was exempt from the application of the *Act*. But, again, the Commission had the power to order the removal of such exemption when, in its opinion, such action was "in the public interest." Again, upon receipt of the Hale report, if not earlier, there was sufficient material before the Commission to justify them taking such action. But no order removing the exemption of PAP was ever made.

(c) The Commission aggressively used its powers of investigation under part 3 of the *Act* during the period 1966 to 1969 to look into these companies. But these investigations did not result in any prosecution!

4. Conclusion

Upon this review, it would appear at first sight that the Commission failed in its duty under the *Act*.

However, any apparent failure of the Commission must, in my view, be understood in the proper context. To establish the proper context, it is necessary to resort to consideration of certain fundamental principles.

The Background of the Enactment of the *Securities Act*

1. The Problem

For as long as a century, there has existed, in the criminal law, provision for the exercise of the criminal sanction for wrongdoing in the marketplace. However, during the course of the first half of this century it became increasingly apparent that this sanction was inadequate to actually prevent such wrongdoing. Thus, increasingly, the need was felt for new laws to protect the public. Specifically:

(a) It became apparent that the traditional law enforcement agencies for various reasons were not adequate to the task of investigation and enforcement of the criminal law in this respect.

(b) The need was seen for preventative actions, i.e., *a priori* regulation to prevent wrongdoing before it occurred.

Thus, over the last forty years, legislation similar to the *Securities Act* has been passed in most jurisdictions in North America.

2. The Solution: The American Model

It would appear that the model for the *Securities Act* was the American legislation establishing the *Securities and Exchange Commission*. A unique feature of that legislation was the establishment of an independent agency to administer the *Statute*. In the context of the American Constitution, with the separation of the executive and legislative powers, an independent agency was intended to be somewhat separate from the presidential power. A motivating factor seems to have been the fear that any other structure might have been relatively more susceptible to corruption or undue political influence.

But, under the American Constitution, the judiciary plays a large supervisory role over government by virtue of the Bill of Rights. Thus, it is easier there to establish an agency that has no direct political accountability because there is, under their Constitution, substantial judicial accountability. Judicial accountability means, of course, accountability before the law. To be so accountable, there must first be a law, enforceable in Court, that governs your actions. Such a law exists in detail in the U.S.A. Constitution.

But, in our political tradition, the exercise of his office by any *public official* is largely *not* subject to supervision by

the judiciary. Our tradition, contrary to the American tradition, relies on the principle of *political* accountability. We do not have a great body of law governing the actions of governments. Instead, we have a Parliament, or Legislature, who can at any time express a lack of confidence in the Government, in which case it must leave office or call an election. This is *political* accountability.

Thus, under parliamentary government, the executive power is *directly* responsible to and must account to the Legislature. There is no Bill of Rights constitutionally requiring executive agencies to account to the judiciary. In the main, we rely on political accountability, not judicial accountability, to keep the executive power in check.

Thus, the creation of an "independent" agency is somewhat contrary to our political traditions. An agency that is truly independent of the government of the day will not be politically accountable, and unless express provision is made, it will also not be legally accountable. Therefore, it will be accountable to no one. This is not responsible government, but arbitrary government.

The *Securities Act* creates an agency with just such arbitrary powers. *

* There remains a *limited* responsibility for judicial accountability for the exercise of *some* of its powers.

To discuss this subject further, it is necessary to briefly review the existing powers given to the Securities Commission by the *Act*.

(a) Legislative Powers: The *Act* provides that the Commission (as opposed to the Director) has certain powers which might fairly be described as legislative. In s.19 (5), s.59, s.106, and in s.132 (all references are to the 1970 *Statute*) it is given the power to make certain provisions of the *Act* or all of the *Act* applicable or not to any particular person. Thus, the Commission is given the power to decide who must obey the *Act* and who must not obey the *Act*. This, in essence, is a delegation by the Legislature of its legislative powers to the Securities Commission, without any direct political or legal accountability.

(b) Judicial Powers: In s.62 the Commission is given, in effect, the power of injunction against an individual who has, in the opinion of the Commission, breached some provision of the *Act*. This is traditionally a judicial power. Also, the Commission under s.28 is given the power to review, by way of appeal, all decisions of the Director. A further appeal lies, at least in some respects, to the Appellate Division of the Supreme Court of Alberta. This provision also is, to a degree, the exercise of a judicial function although it may also be mixed with an administrative function.

(c) Administrative Functions: The power under part 3 of the Act to convene an investigation which is, in effect, a grand jury, is traditionally considered either an administrative or legislative function. The power of "recognition" of a stock exchange, which is tantamount to a power of license, is traditionally considered an administrative function.

According to our political traditions, legislative and administrative functions should be performed by those who are responsible to the people through the electoral process, and judicial functions are to be performed by those who are truly independent, that is, not subject to *any* pressure from government and who do not partake in *any* way in the electoral process.

Thus, the granting of these powers to an agency which is, in the main, exempt from accountability before either the judiciary (i.e., the law) or the people is contrary to our political traditions.

The Reconciliation of Independence with the Tradition of Responsible Government

1. The Myth of Independence

The contradiction mentioned is reconciled with our political traditions firstly by virtue of the fact that the members of the Commission are not truly independent. This is because they can, at any time, be removed from office by the Government, as was pointed out by the founding chairman, Mr. Rose, in the course of his testimony. This necessarily creates at least an *indirect*

political accountability, in that the Commission cannot feel free to act with impunity in any way directly contrary to the policy of the Government of the day. Thus, in this indirect fashion, the Commission is politically accountable. Thus, also, its independence is largely a facade.

2. The Paradox: Independence and the Judicial Function

Successive governments, since the passage of the Act, recognizing that a significant portion of the function of the Commission was purely judicial, have appointed, almost exclusively, members (present or retired) of the judiciary to the Commission. Thus, in an indirect way, the independence of the Commission in the exercise of its judicial functions is maintained because the Commission, in the exercise of its judicial function, "borrows" the prestige and true independence of the individual members, as well as, of course, their knowledge and experience.

3. Legislative and Administrative Power: Instinctive Compliance with Tradition

It can be seen from the history of the actions of the Commission that the Commission itself instinctively understood that it ought not to exercise its legislative and administrative function in any *unusual* or *remarkable* way without some form of prior sanction by the Government of the day. Thus, when the problem arose after 1962 with insurance companies, rather than arbitrarily invoking its powers under the Act to make such companies subject to the Act, the Commission instead sought the removal of this exemption by legislative action. It was largely

as a result of Mr. Rose's efforts that in 1967 the *Act* was amended by the Legislature to remove that exemption. It is clear, then, that the persons directly involved attempted to reconcile our political traditions with the arbitrary powers of the Commission.

Similarly, instead of the Commission arbitrarily invoking its power to make PAP or any private company subject to the *Act*, it has been involved for some time in a process of consultation with government to achieve this by some form of amendment to the *Act* which at least implicitly approves such action by the Commission.

Similarly, I note that before convening the major investigation by Mr. Hale in 1967, the Commission consulted with the then Attorney-General. Thus, the exercise of even its administrative function in any *unusual* or *remarkable* way was done only after consultation with the government of the day.

Again, in the exercise of its powers of investigation of criminal activities, the policy has been that the role of the Commission would be limited to one of investigation and report and not prosecution. Thus, at least in respect of offences under the Criminal Code, the Commission limits its role to reporting to the Attorney-General, who traditionally is the officer of government responsible for law enforcement, and who is politically accountable. Lately, the Commission has begun to initiate prosecutions of breaches of the *Securities Act* but even this diminution of the traditional role of the Attorney-General

was only done with the consent of the Government of the day.

4. Conclusion

Thus it can be seen that the arbitrary powers of this independent agency have in fact been exercised with as much adherence as possible to our political traditions. Thus, in reality, these arbitrary powers are largely a sham, as both the Government and the Commission expect them never to be exercised in a way contrary to the policy of the government of the day. Therefore, in reality the Commission is politically accountable, and does not have the independent arbitrary power the Act purports to give it.

At the outset I noted the apparent failure of the Securities Commission to act. But, in the context just considered, it can be seen that any such failure was nothing more than an attempt to adhere to the tradition of responsible government.

I believe that I should add at this point that in my opinion it is clear that the Chairman and members of the Securities Commission, and the Director, during the period under review, acted in all cases in good faith and with the public interest as their principal consideration.

Their apparent reluctance to themselves determine when the "public interest" required the application of the Act to some person who was otherwise exempt was based on an understanding of the tradition of responsible government, and not on any base motive.

Obviously they felt that it should be the elected representatives of the people who decide what is in the public interest, and no one else. In my opinion they should be respected, not criticized, for that attitude.

A Commentary on the Present Structure

My comments here should, as I have observed, be understood as criticisms of the structure set up by the *Securities Act* and not of any of the persons involved in trying to make that structure work.

The *Securities Act* can be fairly said to have failed because investors lost \$5,000,000.00, and the structures created by the *Act* were ineffective to prevent it. I think, therefore, that it is proper for me to review the advantages and disadvantages of this structure.

1. Advantages

(a) Flexibility: The present structure is sometimes defended on the grounds of flexibility. This is the usual defence raised where the elected representatives of the people (the Legislature) delegate their power to make laws to someone else. There is no doubt, that, having regard to the complexities of modern life, there ought to be a certain amount of flexibility in the legislative process. But, the structure of the *Securities Act* did not prove to be sufficiently flexible to cope with the problems presented to society by the activities of Albert Jaasma! This argument

had more weight when the Legislature met less often.

(b) Expertise: It is sometimes said that one of the advantages of a structure such as that created by the *Securities Act* is that it is necessary to have considerable expertise to properly administer the powers under the Act. No doubt, expertise is required. The question that must be faced, however, is whether Government ought to be conducted by experts or whether Government ^{ought} / to be conducted by the elected representatives of the people with the assistance of advice by the experts.

(c) A Measure of Independence: The intervention of a quasi-independent agency such as the Commission between the government and the individual being regulated is sometimes defended as a useful means of minimizing corruption because it is more difficult to corrupt a government under such circumstances. Recent history in the United States indicates, however, that such quasi-independent agencies may in fact not be able to withstand aggressive political pressure. *

2. Disadvantages

The major disadvantage of this structure, in my view, is that

* The Chairman of the United States Securities and Exchange Commission recently resigned because of suggestions he had succumbed to such pressures.

it is largely a sham. As a direct result, the Government of the day can exercise the *power* of the Commission, because in reality the Commission is reluctant to exercise its powers without the concurrence of the Government of the day, and yet escape *political responsibility* for the exercise of that power by hiding behind the purported independent acts of the Commission. Thus, the Government has the power of decision but escapes the responsibility for the decision. In my view, this is another form of corruption of the political process, and is far more significant in the long run than any corruption that might arise from political patronage.

Another disadvantage of the present system is the duplication that it creates.

There is a judicial system in this province, and it is unclear why it is necessary to duplicate the existing system in special cases. There is something almost silly about having a system of Courts and judges and, alongside them, little quasi-courts staffed with judges from the regular Courts!

I suspect that this situation sometimes arises because it is felt that the procedures of the traditional judicial system are not adequate to cope with the resolution of problems that arise in the modern day. If this be true, then clearly the people have the right to demand that the judicial procedures be changed to cope with modern needs.

It should not be necessary, because of procedural difficulties,

to establish a secondary judicial system. *

Also, in fulfilment of its law enforcement role it would appear that the Securities Commission duplicates the existing law enforcement agencies in the province. After years of investigation of the companies under review by the Commission, a report was prepared and forwarded to the Department of the Attorney-General. Then a new investigation by the police and the Departmental staff was commenced! It would appear that the only result of all this was inordinate delay.

Again, as noted above, it would appear that the Securities Commission was given an investigatory role in addition to its regulatory role because of the perceived inadequacies of the traditional investigative agencies in respect of commercial crimes. But, one is constrained to observe that the fulfilment of this role by the Securities Commission did not, at least in the case under review, prove exactly a stunning success. It would appear that what is needed is not *several duplicate* investigative facilities, but *one effective* investigative facility. This is further discussed elsewhere.

3. Conclusion

It is my respectful opinion that the structure established under the *Securities Act* has not worked as well as hoped for.

* One lawyer (perhaps cynically) said that the real effect of this is that instead of the Director having to go to the Courts, the Courts come to him! The Commission meets, not at the Law Courts, but at the Commission offices.

To the extent that it has worked well, I suspect that it is despite the structure and not because of it.

Commentary on Part III of the Act

It was my opinion that the powers granted to the Commission under Part III of the *Securities Act* were deserving of special comment.

These provisions give the Commission the power to confer on any person all of the powers of a grand jury.

Traditionally, such powers are exercised only under more constraints than appear in the *Act*. There is no provision for the confidentiality of the report. There is no statutory protection to ensure that the person appointed to conduct the inquiry has a thorough understanding of the applicable traditions and law. Also, in my opinion, the body who makes a decision to convene such an inquiry should be politically accountable. Also, there is some question in my mind as to whether or not the present provisions in Part III meet the requirements of the Alberta Bill of Rights. I have made certain recommendations in this respect.

The Department of the Attorney-General

1. Role of the Attorney-General in Government

Traditionally, the Attorney-General is the chief law enforcement officer of the Crown with general supervision over the investigation and prosecution of crimes and offences. Thus, although others may have the right to initiate a criminal prosecution,

he has the right to intervene in any criminal prosecution and stop it or proceed with it. And he has the right to initiate a criminal prosecution, including the power to directly prefer an indictment before a superior court. None of these powers are reviewable by the Courts under current judicial authority. Yet the power of discretion whether to charge any citizen or not, or proceed with such a charge or not, is an awesome power which, if unfairly exercised, will result in injustice.

It is our common belief and tradition that such power should never be exercised irresponsibly, i.e., the person with such power should be accountable to the people for his exercise of that power. The Attorney-General is so accountable. His is a political accountability, that is, he must account to the Legislature for his conduct of his office.

All that I have just said is, I believe, generally understood. What is not generally understood is that over the last 50 years many other agencies of government have accumulated powers with respect to law enforcement, with the result that the role of the Attorney-General in government is no longer so clear as it used to be.

In my view it is a profoundly important aspect of the organization of society that the responsibility for the exercise of the Crown discretion in respect of criminal matters rest with an officer of the Crown who is clearly understood by all in society to have that responsibility and to have the necessity

to account for its exercise. The tendency in recent times to depart from that tradition is to be regretted.

2. The Fair Exercise of the Crown Discretion: A Challenge

It is the duty of the Attorney-General to see that the exercise of the Crown discretion is done with justice to all. Justice is not done to all if, for example, only certain categories of crimes are in fact prosecuted or if only a certain category of criminals are prosecuted.

Many crimes deal with offences against property. It is a crime in our society to take the property of another whether by stealth (theft), violence (robbery), or guile (fraud). There can be no sense of justice in society if one category of crime, such as theft or robbery, is diligently prosecuted and another, such as fraud, is not.

It is generally accepted that avarice is the principal motive for most crimes against property. Avarice is not a vice particular to the poor or the uneducated or the unsophisticated or the unintelligent. Avarice is a vice which can also grip the rich, the well-educated, the sophisticated, and the clever. But, by virtue of these attributes, the latter group, if they commit a crime, are more likely to commit a crime by guile than by stealth or violence.

Also, they will demonstrate the capacity for considerable guile, so that on occasion the property of another will be taken

and that other perhaps not even realize that he has been defrauded. Thus, crimes of guile are more difficult to investigate and to prosecute because it may be difficult to determine if a crime has actually been committed. Also, commonly, these crimes are committed in furtherance of a conspiracy of two or more persons; often with an intelligent and well-advised attempt to "cover-up."

The investigation of such crimes therefore calls for law enforcement techniques of sophistication and intelligence at least equal to that of the criminal. Should the law enforcement agencies fail in this challenge, the result is that there can be a sense of injustice in our society.*

The law enforcement agencies *must* develop resources sufficient to adequately investigate and prosecute this form of crime.

3. A Brief History of Investigations to Date

I have already noted the present role of the Securities Commission in the law enforcement system.

It began investigations in 1966. In late 1967, it recommended outside assistance. Mr. Hale began his inquiries in late 1967 and completed them in July, 1969. The matter was referred to

* For example, the opinion too often expressed, that there is one law for the rich and one for the poor seems to be based, not on any inequality in the law itself or its judicial application, but rather on a suspected or alleged inequality in the exercise of the Crown discretion in criminal cases.

the Department of the Attorney-General. Nothing of significance seems to have happened until December, 1969, when the matter was referred to the R.C.M.P. for *further* investigation. In July, 1970, the Attorney-General, personally, demanded a report and was told that the Department was awaiting a resumé of the Hale findings from the Director of the Securities Commission. These were received the same month. Three months later, the Attorney-General was informed that the Director and the Departmental solicitor had agreed that the matters raised in the Hale report were now *too old* for prosecution. This, then, was the result of extensive investigations to that time.

Over the next year there were a series of investigations conducted by the R.C.M.P. and reported to the Securities Commission and the Department of the Attorney-General. It would appear that the R.C.M.P. and the Securities Commission investigations were proceeding collaterally but with some effort at coordination. Authorization was issued by the Attorney-General in December, 1970, for prosecution of PAP, and Donogo Holdings Ltd. for alleged offences under the *Securities Act*. Meanwhile, investigations continued.

In May of 1971 the Department arranged to obtain outside assistance from chartered accountants. On October 20, 1971, the solicitor suggested the matter required the full attention of a solicitor. On November 9, 1971, the file was assigned to outside counsel! Thereafter, investigations continued and there are some outstanding charges as a result.

Thus, after 2 years of work, the final decision was that the Department of the Attorney-General lacked the resources to conduct such an investigation and any resulting prosecutions.

From 1971, to the time of commencement of this Inquiry, a principal difficulty remained that, in certain areas, there were yet facts to discover to warrant a prosecution. As at the commencement of this Inquiry, these investigations were still continuing, although most of the activities under investigation had ceased four years earlier.

As I observed in the Introduction to this Report, during the course of this Inquiry matters came to my attention which have led me to the view that there ought to be further investigations of possible criminal acts. Thus, the matter has not *yet* ended.

Without going into the matter any more deeply, (for to do so would unduly jeopardize the rights of others) it is clear that there have been inordinate delays in the investigation of these matters.

4. Reasons for Delay

(a) Supervisory Changes

I note that a series of persons succeeded one another in the supervision of these investigations. This is bound to result in delay as each new person must familiarize himself with the matter. There is also, in such circumstances,

the possibility that something might be overlooked or forgotten, or that an inquiry duplicate an earlier inquiry.

(b) Outside Assistance

I note also a tendency to refer matters outside the public service. This will inevitably result in delay because such persons have other clients and other demands on their time.

(c) Difficulty Obtaining Evidence

I note also another reason has been difficulty in acquiring the needed evidence, notwithstanding inquiries extending over almost a decade.

5. Conclusion

I am led to the inevitable conclusion that the present system for investigation of such matters is inadequate in terms of structure and personnel.

I do not think that the problem relates in any way to inadequate *powers* of investigation, as it is difficult to conceive of more powerful investigatory techniques than those presently available under Part III of the *Securities Act*.

This unsatisfactory situation cannot be fairly said to be the fault of any person. Instead, it is the result of the casual introduction, over many years, of structures for the investigation of crimes which have now been proved not to be adequate, and

which, in my opinion, are badly in need of reform. I have made certain recommendations in this respect.

Director of Trust Companies

The involvement of the Director of Trust Companies in the affairs of Cosmopolitan and PAP and allied companies was somewhat peripheral.

In the ordinary course, Mr. Dansereau, the Director of Trust Companies, received in March, 1971, the 1970 annual report of Northwest Trust Company, which unlike Cosmopolitan, was under his supervision. In the course of reviewing that report, he noted that in October, 1970, Northwest Trust had loaned money to Cosmopolitan. The Director formed the opinion that the securities taken by Northwest Trust were not adequate in terms of the requirements of the *Trust Companies Act* and immediately so informed Northwest Trust, only then to be told that Cosmopolitan had since defaulted and that steps were being taken by Northwest Trust to realize on the security.

He attended a meeting of Governmental officials in March, 1971, at which time officials of Northwest Trust outlined to the Government what they proposed to do, i.e., to realize on their securities and then to find a purchaser of the securities so as to remove them from the books of the Northwest Trust and comply with the *Act*.

The Director had noted that even a complete loss on this transaction would not unduly jeopardize the shareholders or depositors of Northwest Trust, and decided to deal firmly but not to over-react. He therefore made no objection to the acquisition of the Seaboard shares

in realization of the loan on the assurance that Northwest Trust would, as soon as practicable, dispose of this unauthorized investment. He then monitored the situation until disposition had occurred and decided to let pass the fact that this disposition was by way of an unauthorized, non-arms-length, transaction with the parent company, Allarco Developments.

While allowing this transaction he may have exposed the shareholders of Northwest Trust to the risk of an improper profit being passed on to the parent, it also removed any further risk of loss. Considering the total circumstance, the Director concluded that to allow this transaction to proceed was in the best interest of the shareholders and depositors of Northwest Trust.

The Director has wide powers under the Act. While exercising discretion in the use of these powers will inevitably expose him to criticism from either within or without the industry, nevertheless I perceive that it is his duty to exercise that discretion to the best of his ability, or, as he put it, with prudence. In my opinion, his exercise of his powers here demonstrate a high measure of prudence and reason and any criticism of his action is totally unwarranted.

In my opinion, his actions in this transaction are a fair example of the proper exercise of his powers by a supervisory official. He was guilty of no delay, no unreasonable hindrance, and no mere technical objection. He should be commended for accepting the responsibility given to him under the *Statute* to use his own judgment, even at risk of later criticism. His willingness to accept that risk, and to not hide behind technicality or delay to avoid making *judgmental*

decisions, should be a model to others.

My only difficulty with the office of Director of Trust Companies is that this officer should be subject, clearly, to the supervision of a Minister of the Crown, who should have to accept responsibility for his actions.

The Companies Branch

The only relevance of the operations of the office of Registrar of Companies to the matters under inquiry relates to PAP Holdings Ltd. This company was a private company incorporated by the registrar.

As a private company, it was limited to 50 shareholders not of a special classification. Returns filed with the Registrar by this company on more than one occasion indicated an apparent breach of the Statutory provision. This apparently was not noted by the clerical staff of the Registrar who in fact, review thousands of such returns received in the name of the Registrar.

It would appear that, under the *Companies Act*, even had the company transgressed the regulations with respect to private companies, for the purposes of the *Companies Act* this merely would have meant that it, the company, would now be classified as a public company and, again, for the purposes of the *Companies Act*, the only change would be that the company would now be required to file financial statements with the Registrar.

The fact that such statements never were required to be filed with the Registrar does not appear to have been of consequence in any way in the events which led up to the ultimate failure of PAP Holdings Ltd. Therefore this incident is of no relevance in determining the failure of the company. However, since the same oversight was committed in successive years, the inference is clear that as a matter of course there was inadequate effort on the part of the staff of the Registrar to check the returns of private companies to determine if they had in fact, ceased to be private companies. The Registrar gave evidence that he understood that it was his role to police private companies at least in this limited way, but obviously this policy was not being carried out with any rigor. Similarly, there was no practice of reporting to the Securities Commission the names of companies whose annual returns indicated an inordinately high level of share dealings which would thus give rise to suspicions about the propriety of their actions under the *Securities Act*.

The office of Registrar of Companies would be best thought of as a mere depository of documents available for public scrutiny and not as an office exercising any supervisory capacity over the activities of these companies. This is the impact of the *Act* and the apparent policy of the Registrar.

Cabinet Officers

1. Honourable E. W. Hinman, M.L.A.

Evidence was given by Mr. Albert Jaasma to the effect that he paid a bribe to Hon. E. W. Hinman, M.L.A. to assist him in expediting the incorporation of Cosmopolitan and obtaining a necessary

amendment to the *Insurance Act* to authorize the Superintendent of Insurance to license the company, all at a time when Mr. Hinman was a member of the Executive Council of Alberta.

Specifically, Jaasma's allegation is that a firm called Edmonton Produce had been listed for sale with a firm called Reo Realty, a real estate agency in which Hinman acknowledges he was a shareholder at the time. Jaasma alleges further that he personally was instrumental in completing a sale of that business and was by prior agreement entitled to a share of the commission earned by Reo Realty and that he did not obtain his share of that commission in return for the alleged assistance of Mr. Hinman.

Hinman's evidence is that he personally favoured the repeal of the section in the *Insurance Act* barring the licensing of provincial insurance companies. The record indicates that he participated in discussions to that end before the matter reached Cabinet level. Subsequently the Government introduced such an amendment, and it was passed by the Legislature.

But Hinman denies that the position he took in this matter was in any way influenced by any improper inducement offered by or arranged with Albert Jaasma, and that he received no material advantage, directly or indirectly, from Jaasma.

The owner of Edmonton Produce gave evidence that he never listed this property for sale with Reo Realty, and this was confirmed by letter to the Inquiry from Reo Realty. The owner

further gave evidence that Edmonton Produce was sold to Ogilvie Flour Mills (Ogilvie) and that this sale was consummated as a result of direct negotiations between the owner and the buyer without the intervention of Albert Jaasma.

If this be true, the basis of the Jaasma allegation evaporates.

In his own testimony, it is unclear whether Jaasma alleges that he actually negotiated a sale to Ogilvie. His evidence in this respect (p. 137-138)* is that he formed a syndicate with Ogilvie but that Ogilvie "withdrew" from this. I take it from that that he is saying that he did not, in fact, negotiate such a sale.

Then he says he negotiated with McCabe Grain and that he made a deal with McCabe Grain. It was my impression when hearing his testimony that his allegation was that the buyer was McCabe Grain and that he had found that buyer. But McCabe Grain never bought this business.

Subsequently Jaasma submitted to the Inquiry his personal file on these matters. (Ex. 284*). Presumably this file was tendered to support the allegations by Jaasma and is as complete as he can make it in this respect. There is absolutely nothing in this file to indicate that Jaasma at any time dealt with

* Such references are to the page number in the transcript of the public hearing.

* Such references are to the exhibits listed in Appendix C.

Ogilvie. On the contrary, the file indicates that Jaasma was informed that Edmonton Produce had been sold while he was in the midst of attempting to organize an offer. He wrote to McCabe Grain on July 31, 1962, made reference to the actual purchaser as Ogilvie, and complained that the efforts of his group to buy the business had been frustrated. He says, "So far as is known to us and the group, Ogilvie has offered a cash price of \$500,000..." Such reference clearly indicates that he understood Ogilvie to be a competing buyer and certainly not a purchaser that he had obtained.

I conclude on the basis of the evidence tendered by Jaasma himself, that what actually happened was that he was attempting to form a syndicate to make an offer to purchase Edmonton Produce but was not successful. It is therefore clear that Jaasma would have no right whatever to claim any commission which may or may not have been due to Reo Realty on that transaction.

There being no basis for any claim by him upon Reo Realty, there is therefore no basis for his allegation that there was any benefit conferred by him upon Reo Realty and, indirectly, Hinman. Thus his allegation of impropriety against Hinman is demonstrably false.

It would appear that Jaasma had been put to some time and expense in his abortive effort to buy Edmonton Produce and that he was left, since he had not been successful, without any opportunity for compensation. I note, from his own file, that

he attempted to get compensation from McCabe Grain without success, and it may well have been that he then attempted, also without success, to obtain compensation from others.

Certain of the documents in the Jaasma file indicate that Hinman was apparently one of the principals involved in the group that Jaasma had attempted to organize to effect the purchase of Edmonton Produce. But there is nothing whatever in the file to indicate that Hinman or any of the other named principals, had ever agreed to accept any responsibility for a share of the costs involved. Rather, it is implicit from the file that Jaasma expected to profit from this as a principal along with the others and also as an agent through some listing he may have had himself with Edmonton Produce. However, none of this substantiates Jaasma's allegation.

I conclude that Jaasma's allegation is demonstrably false. I can therefore find no evidence that Hinman accepted any improper inducement offered by or arranged with Albert Jaasma.

It would appear, however, that Hinman had some private business dealings with Jaasma at a time when he also was dealing with Jaasma in his Governmental capacity.

In my opinion, even if no impropriety actually occurs, it is in the public interest that the holder of office in the Executive Council of Alberta should never place himself in the position where, at the same time, he has both official and

private business dealings with a member of the public. Indeed, I doubt whether it should be considered proper for a member of the Executive Council to be actively engaged in any private business dealings contemporaneous with his membership in the Executive Council. I note that, subsequent to the time in question, Mr. Hinman resigned from the Executive Council because he was in dispute with the then Chairman of the Council on this point.

CHAPTER IV

RECOMMENDATIONS OF CHANGES IN
EXISTING LEGISLATION OR REGULATIONS AND RELATED MATTERS

CHAPTER IV - RECOMMENDATIONS OF CHANGES IN EXISTING LEGISLATION OR REGULATIONS AND RELATED MATTERS

Introduction

I have been charged to inquire and report on:

"... (d) whether any changes should be made in the existing legislation or regulations under which the said regulatory bodies operate, ..."

I have construed this broadly on the assumption that the Government might have some small interest in any comments I have to make on any points that arose during this Inquiry.

Recommendations

1. Publication of Report

Chapter II of this Report should be published by the Government and circulated by it to all investors in The Cosmopolitan Life Assurance Company, Sioux Holdings Ltd., PAP Holdings Ltd., and Rocky Holdings Ltd., as best they can be discovered.*

The Insurance Act (See Chapter III)

2. The Minister of Consumer Affairs is rightly charged with the administration of the *Insurance Act*.
3. While the *Act* should make provision to prevent insolvency,

* Messrs. Van Rhyn, Steffanson, McMullen and Geddes have information available in this respect. See also Exhibits 63, 64, 73 and 74.

these provisions should not be so rigid that the formation of new enterprises becomes impracticable. Rather, it should be considered sufficient to provide a scheme whereby losses are minimized in the event of an insolvency. Such a scheme is presently provided, and it requires only minor improvements.

4. The actual amount of capital required to develop a life insurance company depends on several factors, and, therefore, there is no magic figure of minimum capital which will in all circumstances be appropriate. But the present statutory minimum capital requirement should be retained to provide uniformity with other jurisdictions.

5. However, the Lieutenant-Governor-in-Council should have the power, in appropriate circumstances, to authorize the licensing of a company with *less* than the statutory minimum of capital. The appropriate circumstances would, in my view, be where the proposed new insurer undertakes to so limit its operations that less capital would be required.

6. Similarly, because the amount of capital *actually* required by a specific insurer may be *more* than the statutory minimum, the Minister upon the recommendation of the Superintendent should be empowered to require more than the statutory minimum capital before a license is granted or renewed.

7. To maintain an adequate relationship between the minimum capital and the actual operations of the insurer, and because the

quality of management and method of operation are critically important to success, the Superintendent should be given the power to require more information at the time of application for, and set more conditions on, a license, or any renewal thereof.

These should include:

(a) Material to satisfy the Superintendent of the feasibility of the proposed market operations of the applicant, both in respect of its operations generally and any particular policy.

(b) The power to set limits on the amount of business actually written.

(c) The power to require a projection of sales and expenses for a reasonable period into the future or until a profit is budgeted.

(d) That the directors of the company include an adequate number not involved in management and with adequate experience and integrity.

(e) That the proposed officers have sufficient experience and integrity.

(f) That no director or officer will receive any benefit directly or indirectly as a result of the sale of any insurance by him.

8. The Minister, upon the recommendation of the Superintendent, should have the power to require of any licensee the filing of financial reports, in a form prescribed by the Minister, more often than annually.
9. The Minister presently has adequate discretion under s.45 when a company has been reported to him under s. 43 (2) .of the *Act*. I contemplate that "necessary conditions" which he may impose would include the removal of certain officers, the denial of the power to sell new insurance, and that the company amalgamate or sell its insurance business by a stated deadline.
10. Section 43 and s. 178.1 should be reconciled. I do not see the need for a "special " report as described in s.178.1 S.43 contemplates a report at any time and in all relevant circumstances.
11. The provisions added to the *Act* in 1972 to a degree contradict also s.45, and the *Act* should be made more clear. The appointment of an administrator, under s.178.1 should be merely one of the options open to the Minister or the Lieutenant-Governor-in-Council under s.45.
12. These provisions should be further amended to provide that the Lieutenant-Governor-in-Council may revoke the appointment of the administrator and restore the control of the company to the board of directors.
13. The present purpose of the *Act*, i.e., protecting policy-holders from possible losses in dealings with insurers, should be clearly stated. This is the sole purpose of the *Act*, not just

the *primary* purpose as suggested by the present Superintendent in his submission. (Ex. 266, p. 8). The best protection to policyholders is a healthy, profitable operation and this will incidentally benefit the shareholders. But any benefit to shareholders by the administration of the *Act* should be considered merely incidental thereto.

14. The Minister should have the additional power to obtain compliance with the *Act* or his lawful orders by Injunctions by the Courts on his application.

Insurance Act - Policy

15. The Superintendent should never advise the management of an insurer how to conduct its affairs. He should follow the practice of making the diagnosis and leaving the cure to management. His comments to management about inadequacies should be made formally and to the board of directors.
16. The Superintendent should not have to rely on consulting actuaries, but should have an actuary on staff.
17. The Departmental policy established in 1968 that all acts discovered by the Superintendent or his officers which might constitute offences or crimes be reported to the appropriate authorities should be retained.
18. I cannot recommend, at this time, that the Government arrange for any mandatory provision to insure against losses by policyholders

which would be funded by all licensed insurers as, thereby, successful insurers would be protecting and subsidizing their unsuccessful and incompetent competitors.

19. The 1973 amendments to the *Act* provide adequate safeguards with respect to conflict of interest situations, subject to the above comments about commissions on sale of insurance.

The Securities Act (See Chapter III)

20. The responsibility for the administration of the *Securities Act* should rest with the Minister of Consumer Affairs, along with other consumer protection legislation.

In this day, it is generally accepted that a proper role of government is to provide protection of the consuming public in the marketplace, and that the Department of Consumer Affairs, generally, is the department of government charged with that responsibility.

As the intention of the *Insurance Act* is to provide regulation of the insurance industry to protect the consuming public when buying insurance, the administration of the *Insurance Act* properly ought to remain with the Minister of Consumer Affairs.

So also the *Securities Act* is intended to provide for a scheme of regulation of the sale of securities to the public

and thus provide a scheme of protection for the public when making investments, and the administration of the *Securities Act* ought to be placed under the jurisdiction of the Minister of Consumer Affairs. Specifically,

(a) An office should be established to perform the same role as the present Director of the Securities Commission, and he should be accountable to the Minister of Consumer Affairs.

(b) The judicial functions of the Securities Commission, including the review of the quasi-judicial powers of the Director, should be given to the Trial Division of the Supreme Court of Alberta and the District Courts of Alberta.

(c) Appropriate procedural changes should be made by these Courts to deal with this jurisdiction.

(d) The legislative powers of the Securities Commission (i.e. the powers in s.19, s.54, s.106 and s.132) under the *Act* should be exercised in respect of an entire class of persons by the Lieutenant-Governor-in-Council and, in respect of any specific person, by the Minister subject to appeal to the Lieutenant-Governor-in-Council.

There should be an attempt at uniformity of securities regulation. But uniformity is only required in regulatory provisions and not structural or administrative provisions.

21. There ought to be a review of the necessity of the special powers of investigation under Part III of the Act, particularly from the point of view of whether those provisions are in any particular contrary to the *Alberta Bill of Rights*.

22. If the provisions of Part III are to be retained, they ought to provide that:

(a) If the person making the investigation is to be clothed with power under s.s. 4, that person should be a person presently holding judicial office.

(b) Any report prepared upon completion of such an investigation be confidential and be directed to the Attorney-General.

(c) The establishment of an inquiry should be the responsibility of a body that is directly politically accountable, such as the Attorney-General or the Lieutenant-Governor-in-Council.

23. The system of reporting and non-reporting companies, as established in British Columbia, should not be adopted.

24. In consultation with the Institute of Chartered Accountants, the Minister of Consumer Affairs, for the purpose of securities trades by insurers, should approve a form of balance sheet of an insurer which, in a way satisfactory to him, demonstrates the existence and value of the business in force of the insurer.

25. The Minister of Consumer Affairs should study the establishment of professional investment counsellors readily accessible to the small investor. Such persons should be adequately trained, subject to a standard of ethics, and receive income from buyers, not sellers. This study should be made in consultation with the Law Society of Alberta and the Institute of Chartered Accountants.

The Companies Act

26. There is no reason why insurance companies need be incorporated by private statute, but the incorporation of such a company should be subject to the prior consent of the Minister of Consumer Affairs. Appropriate amendments to the *Companies Act* should be made. These should include provision for the calling of a general meeting by a petition of shareholders.

27. The concept of the private company should be maintained. A private company is one where the shares are closely held among a relatively small group of persons and where its financial affairs are not a matter of public record.

28. To prevent abuse, the *Companies Act* should be amended to limit the number of shareholders in a private company to 20 inclusive of all persons holding a beneficial interest in a share and inclusive of all shareholders of any other private company that is a shareholder in the company. Provision should be made for returns to be filed by the company adequate to supply the

Registrar with this information, and supported by an affidavit of verification to the best knowledge and belief of the company secretary or solicitor.

29. The *Act* should provide that the Registrar shall, upon receipt of any return indicating that a private company has exceeded the maximum allowable number of shareholders, report this fact to the Minister of Consumer Affairs forthwith.

30. There should be an amendment to the *Companies Act* to provide that any company that has made any public offering of its shares must establish an audit committee of the board of directors, consisting of not less than three persons not directly involved in management, to whom the auditor appointed by the shareholders reports and from whom he takes instructions.

The Department of the Attorney-General

31. The status of the Attorney-General of Alberta as the chief law enforcement officer of the Crown in Alberta should be re-affirmed and he should be responsible for the conduct of all criminal investigations and prosecutions in Alberta.

32. There ought to be established a senior office in the Department of the Attorney-General charged with the responsibility of the investigation and prosecution of cases involving commercial fraud and violation of consumer protection legislation. This office should be equal in status to the Director of Criminal

Prosecutions, and the holder of this office should have direct access to the Minister. The office should be so organized that those sections of the police forces working in this area would work under his direct supervision.

33. This officer should have sufficient staff to meet the demands of office without reliance on outside assistance. There should be sufficient persons in the public service to adequately conduct the affairs of government.

34. The involvement in the investigation of criminal activities by administrators of the *Securities Act*, *Insurance Act*, or any other consumer protection statute, should be limited to preliminary investigation and report to this officer.

The Public Inquiries Act

35. As stated in the Salmon Report, public inquiries should be convened only in respect of matters of urgent public importance and not for matters of a local or private nature. To adequately demonstrate the existence of a matter of urgent public importance, the *Public Inquiries Act* should be amended to provide that an Inquiry can only be established upon a Resolution of the Legislature of Alberta.

36. The *Act* should provide that the person conducting the Inquiry be the holder of a judicial office or the retired holder of a judicial office, or, in the event of there being more than one

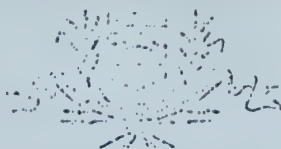
inquirer, the Chairman should be such a person.

37. Also, as stated in the Salmon Report, members of the Commission of Inquiry should be appointed by the Lieutenant-Governor-in-Council after the passage of such a Resolution, but the names of the proposed members should not be disclosed before or during the debate on the Resolution.

38. If these changes are enacted, the other recommendations of the Salmon Report need not take Legislative form.

APPENDIX A

A COPY OF ORDER-IN-COUNCIL 1157/73



Approved and Ordered

[Signature]

LIEUTENANT GOVERNOR

O.C. 1157/73

Edmonton

July 31, 1973

WHEREAS section 2 of The Public Inquiries Act provides that the Lieutenant Governor in Council may appoint a Commissioner to make an inquiry into and report upon any matter within the jurisdiction of the Legislature of Alberta; and

WHEREAS it is expedient and in the public interest to hold a judicial inquiry into matters concerning establishment, operation and failure of The Cosmopolitan Life Assurance Company and PAP Holdings Ltd:

THEREFORE, upon the recommendation of the Honourable the Attorney General, the Lieutenant Governor in Council, pursuant to section 2 of The Public Inquiries Act, orders that a commission issue to His Honour Judge R. P. Kerans of the District Court of the District of Northern Alberta, appointing him a Commissioner to inquire into and report upon

(a) the circumstances surrounding the issuing of certifi-

- (i) the business affairs, including the raising of capital of The Cosmopolitan Life Assurance Company and PAP Holdings Ltd. or either of them; and
 - (ii) business dealings any other individual or company had with either The Cosmopolitan Life Assurance Company or PAP Holdings Ltd. materially adversely affecting the financial circumstances of The Cosmopolitan Life Assurance Company and PAP Holdings Ltd. or either of them;
- (c) whether the said regulatory bodies properly carried out the duties and obligations imposed upon them by legislation or regulation;
- (d) whether any changes should be made in the existing legislation or regulations under which the said regulatory bodies operate;
- (e) such other matters as may be deemed relevant by the Commissioner to ensure a full and fair inquiry and to enable him to report on the reasons for the financial failure of The Cosmopolitan Life Assurance Company and PAP Holdings Ltd. or either of them, however, if in the opinion of the Commissioner, any matter contributing to the said financial failure will be fully reviewed in any other proceeding and a review by the Commissioner would interfere with, prejudice or duplicate such proceedings, he need not inquire into such matter but may, if he deems it advisable, report on any aspect of such proceedings.

APPENDIX B

FOOTNOTES TO CHAPTER II

APPENDIX B - FOOTNOTES TO CHAPTER II

1. See the evidence of John Aubrey Tuck, Executive Director of Canadian Life Insurance Association and particularly at p. 2088.
2. See the evidence of Mr. Eric Geddes.
3. 1962 S.A. 105, a copy of which is in Ex. 103.
4. See the evidence of Mr. McMullen.
5. See Ex. 309.
6. This figure, like all subsequent figures, is not necessarily totally accurate because the records were not found to be reliable. The Commission retained the services of Eric Geddes, C.A. to examine what records were available and also the evidence before the Inquiry with a view to calculating this and other figures. As he explains in his testimony, this is if anything a conservative estimate and includes all forms of investment whether loans or shares.
7. See Ex. 276 and 309. No attempt was made to make a precise reconciliation between the calculations of the liquidator and Mr. Geddes. Any difference is

accounted for by incidental items.

8. A copy of the license is in Ex. 105. It is to be noted that the practice was followed that there be an Order in Council passed prior to the issuance of the license, notwithstanding that the Superintendent had the statutory power alone to issue a license. As is observed in Chapter III, the license was issued only after meeting the conditions set by the statute and the Superintendent.
9. The annual financial reports of Cosmopolitan to the Superintendent of Insurance are in Ex. 101.
10. See Ex. 101.
11. The reason was, of course, that there was an operational loss on each new policy sold which was predictable as earlier mentioned. Note that at no time was there produced any projection prepared by the company in this respect.
12. See Ex. 101.
13. See Ex. 101. In 1967 the *Securities Act* was amended to remove the exemption of insurance companies

from the application of that Act. Thereafter it became necessary for Cosmopolitan to file a prospectus with the Securities Commission prior to the sale of any new securities and to obtain approval of it. Also, during 1967 until this amendment, it was widely known that this step was going to be taken by the Government. In fact, Cosmopolitan never filed a prospectus with the Securities Commission. No doubt one reason for this was that at that time the activities of the company and the principal officers were already under investigation by the Securities Commission with regard to its activities to date and more particularly with respect to the activities involving Cosmo-West Securities Ltd.

As is subsequently noted, a great deal of difficulty arose during the course of 1966 because Cosmo-West Securities Ltd. sold shares to persons who might have thought they were buying treasury stock. As a result, there was for some time thereafter a question whether or not some capital had been improperly diverted from the treasury of Cosmopolitan. However nothing came of this, principally because the records were so inaccurate and the evidence so unreliable that it was impossible to discover what actually happened.

14. This report is Ex. 325. On p. 48 there is this comment, "Had the company exercised more restraint in

its expenditures during the first four years, it would have been in a far more viable capital position than it occupies at the present time." Under heading eight commencing at p. H8, it is recommended that the actuary of the company be required to produce a projection of capital needs to determine the exact amount of new capital required. But, by 1969, it was apparent to all that there would never be any new capital because the Securities Commission would not allow the raising of the new capital. Also, of course, this report was based on a situation which was two years old and the situation since then had considerably worsened, as is indicated in Ex. 101. Thus, in effect, the only option available to the Superintendent short of reporting the matter to the Minister was to get the company to merge its operations with another company.

15. This, as mentioned, was because there was no prospect of a Securities Commission prospectus approval.

16. This statement may be generous toward the Government as I could find no record of any formal demand by the Government that the company proceed with the sale or amalgamation.

17. See Ex. 121.

18. See Ex. 121.

19. See Ex. 121.

20. There was considerable contradictory evidence as to the reason for this delay. According to the principal officers it was because of unreasonable and difficult demands of the British Columbia Superintendent of Insurance. Upon examination of his demands (see Ex. 121) they appear perfectly reasonable. According to others, the problem was the need to amend the capital structure of Seaboard. According to others it was the failure to complete the transaction with respect to the equity fund policies, which in fact was never completed. But according to Mr. McKinnon, and this is supported by his file, the problem simply was that the companies failed to promptly supply the two insurance departments involved with the necessary information. Two insurance departments were involved because Seaboard was a B.C. company and Cosmopolitan was an Alberta company and both Superintendents had to approve. According to the evidence of the secretary-treasurer of Seaboard, Mr. Burnett, the matter became quite complex, involving tax and other considerations, and this was the reason for the delay. I can see nothing in this delay that could be blamed upon either Superintendent

of Insurance because the requests that they made were reasonable. A significant problem was the inadequate capital records of Cosmopolitan.

Much was made of this delay by Jaasma, Van Rhyn and Lampard because, they say, this resulted in Cosmopolitan having to bear the administrative costs until the actual transfer took place. However, Seaboard had agreed to bear these costs and a dispute arose between Seaboard and Cosmopolitan as to a fair valuation of these costs of administration. The account submitted by Cosmopolitan was rejected by Seaboard as being totally unreasonable and they paid a sum to Cosmopolitan for administration costs which was supplied to them by their actuary as a fair figure. As this is in the nature of a private dispute, and may be the subject of litigation, I do not believe I should comment further.

21. See Ex. 121.

22. Counsel reports from an examination of the files of the Superintendent that a proposal for such a plan had been discussed with the Superintendent as early as 1968 and then through 1969, notwithstanding that collaterally, plans were being made to sell the business of the company and then liquidate the company.

Thus, as part of the sale to Seaboard Mr. McKinnon gives evidence that the company undertook to stop selling insurance in April of 1970. Yet, on February 12, 1970 (see Ex. 335) he is making comments to Cosmopolitan as though this matter were going to go on for some time.

One aspect of this matter is that the "audio-visual aid" used by the salesmen to assist them in selling this type of plan used PAP as an example of the advantage of this form of investment. An example of this is in Ex. 213. The significance of this is that the evidence of Mr. Simmonds was that Albert Jaasma would follow the insurance agents around selling shares in PAP to the insureds after they had bought insurance.

I note also that Mr. McKinnon on July 11, 1969 (Ex. 335) told Mr. Oaks, the manager of the sale of this plan, "the company was only buying trouble if they attempted to tell a great story of the corporate structure of the company preceding the presentation of the Cosmo president's plan", and that Oaks replied that the marketing of the plan depended upon "a fairly exciting story being developed". This is from a memo to the file of Mr. McKinnon, June 11, 1969 in Ex. 335.

24. The *Insurance Act* provides that such a ruling can be made and the manner in which the monies are to be handled and reported in the annual report.
25. See Ex. 101, the annual report for the year ended 1969.
26. See Ex. 101 and the annual report for the year ended 1970. This document, it should be noted, also disclosed a shortage in that fund.
27. See Ex. 121 and more particularly the third volume thereof. I understand that no policies were sold at least after the beginning of 1971, but that the premium income continued to come in during 1971 and in 1972 on outstanding policies at a time when, so far as I can determine, there was no administration of Cosmopolitan's affairs and apparently this income either disappeared or went to the Superintendent.
28. See Ex. 309. This figure is arrived at by adding the operation losses calculated by Mr. Geddes and the written-off assets in the total sum of \$64,148.00 as shown on Mr. Geddes' statement.
29. The actuarial valuation is Ex. 102.

30. See the report of the liquidator in Ex. 276. Note that not only could this business be sold for only \$7,681.00, but also, as noted above, over \$198,000.00 had been received in segregated funds and had disappeared.
31. See footnote 28.
32. The figure of \$231,809.00 is arrived at by adding the incorporation costs and the share selling expenses as disclosed in Mr. Geddes' statement, Ex. 309. The capital and sundry losses figure comes from his statement. The net loss is the total of all of these losses less the value of the business on hand.
33. See footnote 58.
34. The actuaries give a normal lapse rate in Ex. 325 at p. N2. This rate, understandably, goes down with the age of the policies. The first year lapse rate is twenty percent and therefore that should be the highest lapse rate that a company should ever have. In other words, a company in business for more than one year should have a lapse rate of less than twenty percent.
- The lapse rate for Cosmopolitan can be obtained from the annual reports in Ex. 101. I have made a brief summary from these records. I have included

death claims in lapses and also any cancellations for any purpose. However death claims are not significant because there were only eleven death claims during the entire period of operation of Cosmopolitan. This rough summary then is as follows:

<u>Year</u>	<u>New Policies</u>	<u>Lapses</u>	<u>In Force at End of Year</u>
1963	58	2	56
1964	234	31	259
1965	854	175	938
1966	724	544	969
1967	414	362	1,020
1968	464	265	1,220
1969	464	371	1,315
1970	342	117	273
1971	10	111	172

The sudden drop from 1969 to 1970 is, of course, accounted for by the sale of the substantial portion of the company's business to Seaboard. As can be seen, the lapse rate expressed as a percentage of the total business in force was 50% in 1966, over 35% in 1967, over 20% in 1968, and over 20% in 1969, and over 40% in 1970 and 1971. During 1966 to 1969 there were almost as many lapses as there were new policies sold, so that the company was running hard to stand still.

35. See Ex. 101 and the comments in footnote 34.
36. According to the records in Ex. 101, the net business in force after re-insurance at the end of 1966 was \$11,707,016.00 and at the end of 1969 \$12,648,755.00. These figures, as well as the figures for gross numbers of policies mentioned above, do not include group policies.
37. In this year, its third year of operation, it sold more policies than it ever subsequently sold. And, in terms of the dollar value of insurance, sold more insurance than it sold in any subsequent year.
38. This was noted by the consulting actuary in 1966 and is in formal report to the Superintendent (see Ex. 110) and again in 1969 in Ex. 325, p. H1. One of the reasons that the B.C. Superintendent of Insurance gave for refusing a license application for B.C. by Cosmopolitan was that the company had failed to develop a sales force (Ex. 109).
39. See Ex. 325, p. E7.
40. See Ex. 99. At one point Jaasma owned a million shares in PAP but subsequently some of these were cancelled when certain assets of Jaasma that had been

traded to the company for these shares were returned to Jaasma.

41. See Ex. 110.

42. See particularly the evidence of Mr. Simmonds, who seems to some degree to have been nothing more than Mr. Jaasma's chauffeur, and also his comments about a mobile telephone, extravagant parties, etc. Also, Dr. Lampard admits to having received a salary of approximately \$700.00 per month during a period when he was participating, according to him, two to three days per month for the company.

43. Ex. 110.

44. See Ex. 110 and specifically Mr. Laing's memo of meetings between himself and Mr. Connauton and Jaasma on June 11 and 12 wherein he quotes himself as saying, "I also said that I thought the company would work more efficiently if Mr. Jaasma himself were to assume the functions of director of agencies and it were left to Mr. Connauton to assume the functions of president. ... I think Mr. Connauton would be able to balance the conflicting pressures from the sales force under Mr. Jaasma and the administrative needs of the company."

He then adds that they, meaning Jaasma and Connauton, acknowledged that "they should have a careful look at their overheads and determine whether they were getting value for money from the senior staff (themselves included) and whether there should be a re-arrangement of functions with advantage to the whole organization". There is also included in the file a copy of Mr. Connauton's memo of the same conversations, made June 13, 1966, listing the complaints that they had made and in this context he adds, "20. The other weaknesses in our system will be dealt with directly with the personnel involved."

45. See the memoranda referred to in footnote 44 where Connauton undertook to do something.
46. These included Dr. Charles Allard and George Berge, C.A.
47. Ex. 203.
48. Compare Ex. 203 with the material in Ex. 110. I note that he recommends the reduction of Jaasma's salary to \$6,000.00 a year but that he also be allowed a sales commission as other salesmen and that Jaasma should not be a member of the management committee.

Obviously he didn't quite have the nerve to suggest that he replace Jaasma as had earlier been suggested.

49. See Ex. 325, p. E4. Note that the annual meeting had been on March 15, and the letter from Connauton to the rest of the Board was dated April 1 and that he was removed on April 5.

50. See Ex. 325, p. E4. Note that it was Dr. Lampard who moved the motion of removal of Connauton, and moved that it was "in the interests of the best and most effective operation of Cosmopolitan!"

51. Ex. 325, p. E5.

52. During his first six months in office Mr. McKinnon became quickly acquainted with all of the affairs of these companies and their problems and expressed concern about them. Commission Counsel has extracted some memoranda prepared by him in this respect which are in Ex. 333. One will notice that the last of those memoranda is dated July 21. In May of that year Mr. MacPhee and Mr. McKinnon met with the Board and outlined the "serious state of the company's management policies". He also became concerned about attempting to get money into Cosmopolitan that he thought should be

coming to Cosmopolitan from Sioux and PAP. But, Commission Counsel reports, he can find nothing in the files subsequent to July of 1967 pressing home the need for management changes. By February of 1968 he had apparently given up on any hope of getting capital to the company from the subsidiary companies and, at any rate, there is no further suggestion that could be found in the files emanating from the department about the adequacy of Albert Jaasma. It would appear that there was some improvement in the management of the policy administration of the company largely because Mr. McKinnon took a direct and personal interest and actually went to the company's offices and became involved in a fairly direct way with the administration of the affairs of the company. But the major problems that had been encountered and which earlier seemed to all point to Albert Jaasma continued and, as is subsequently noted, in December of 1967 McKinnon was advocating that the previous history of the activities of this company be overlooked and the company allowed to again sell shares to the public. See Chapter III.

53. According to all the Directors save Lampard, Sr., who gave evidence, Jaasma always had his way and according to Lampard, Sr. he personally exercised restraint on Jaasma until 1970. Having regard to the affairs of

the company between 1967 and 1970, it is difficult to see what restraint he exercised.

54. See the evidence of all of the Directors save these three.

55. See the evidence of Mr. Amer, Mr. Comeau, Mr. Ferris, Mr. Gorman, Dr. Lewis, Dr. McCrimmon, Mr. Warr, and Mr. Ruddy. Each of them in turn say that they do not understand why they were placed on the Board because they had no experience and did not understand the affairs of the company. Each also complained they were not kept informed as to the affairs of the company. See also the evidence of Mr. Simmonds where he quoted Mr. Jaasma as having described the Directors as "little children".

56. This expression of confidence in the management committee by the shareholders would necessarily weaken the hands of the Directors in dealing firmly with the management committee. It is true, to a degree, that Directors can only assert control over top management to the extent that they, and not top management, have the confidence of the shareholders.

57. See the report of the actuary, Ex. 325 at p. N8,

where he says "Had the company exercised more restraint in its expenditures during the first four years, it would have been in a far more viable capital position than it occupies at the present time."

58. This sum represents operational losses, plus capital losses, plus organizational expenses, plus share selling expenses less the value of the business in force, i.e. the value of the business sold to Seaboard and the value ultimately placed on the equity linked policies.

59. In 1970, after the sale to Seaboard, Cosmopolitan had two major assets: the Seaboard shares, with an acquisition cost in excess of \$700,000.00, and the securities on deposit with the Government of a value of approximately half a million dollars. Therefore, had the company been put into liquidation at this time, as had originally been planned, the shareholders would have received at least half of their original investment. During this period Mr. McKinnon described his role as trying to protect the assets of the company to hand them to a liquidator. As will be seen, in this ambition he failed.

60. See Ex. 124. See also Ex. 102. It would appear

that, at that moment in time, namely early 1970, this represented a fair value for the assets sold, on the basis of an actuarial valuation of Seaboard at that time. As will be subsequently noted, the affairs of Seaboard deteriorated substantially during 1970 and the value of the shares subsequently were substantially reduced.

61. Jaasma, Van Rhyn and Lampard made a great point in their testimony that these shares had not been taken as a security because the shares had been placed in the custody of the Government pursuant to an early undertaking to the Government. There had been a recommendation to the Government that it take control of all of the liquid assets of Cosmopolitan (see Chapter III), but no record can be found that this in fact occurred. The only indication is that the shares were lodged with Northwest Trust by Cosmopolitan. This was merely for safekeeping and did not commit the control of the shares in any way to the Government. See the letter to Northwest Trust, Ex. 124. The burden of the testimony of Jaasma, Van Rhyn and Lampard was that, because the shares happened to be in the immediate custody of Northwest Trust, Northwest Trust took some improper control over them, notwithstanding the commitment to the Government. However, as can be seen from Ex. 124,

they had been placed in the hands of Northwest Trust by Cosmopolitan without any yielding of control over them to the Government, but rather, explicitly, there to remain under the control of "any two of Van Rhyne, Lampard and Laing".

These three also then denied that they actually executed any pledge of these shares to Northwest Trust as a security for a \$450,000.00 loan. However, in cross-examination, Jaasma is confronted with his signature on a letter to Northwest Trust where he expresses the willingness of the company to pledge these shares as a security (Ex. 300). He then acknowledges that he must have been mistaken in his first assertion (p. 3204).

At the same time, the documents executed by the officers in connection with this transaction explicitly make these shares a security to the loan from Northwest Trust. These documents are in Ex. 181.

As to the lack of authority of the Directors, I should make it clear that a certified copy of a purported minute of a meeting of the Directors was supplied to the solicitor for Northwest Trust as required by law but Mr. Laing, one of the persons who certified this minute as true, admitted that in fact no such meeting was held. He says that the matter was urgent and there was no time for a Directors' meeting. He was instructed, as secretary of the company, to consult

the solicitor as to the conduct of a telephone poll. He was advised by the solicitor that the company might certify a resolution as approved by the Directors if all of the Directors approved on a telephone poll, but that it would be prudent to have them subsequently confirm this approval in writing. He says he so reported these facts to Dr. Lampard and that subsequently Dr. Lampard reported to him that all of the Directors had been polled and had approved, and therefore he typed up the minute and certified it. He prepared it in the form of a minute of an actual meeting rather than the more appropriate form out of ignorance. However, all of the Directors except Jaasma, Lampard, Sr. and Lampard, Jr. either deny ever having been polled by telephone or cannot recall such a call. This event was so significant that I am satisfied that had they been called they would have remembered. Laing subsequently sent out a copy of the minute requesting written confirmation as advised by the solicitor, whereupon Mr. Watkins, Q.C. resigned in protest and Mr. Ferris also protested. So it is clear that no such telephone poll took place. Lampard, Sr. acknowledges that there was no meeting but says that Jaasma did the telephoning. Jaasma at first claims that there was a meeting (p. 3205), then is not so sure, and then asks for time to try to remember and says, "I *think* all the

Directors were well aware of it". (p. 3209) The only Director who claims he was telephoned was Lampard, Jr. and he claims he was telephoned by Laing, but this is denied by Laing. See also the evidence of Simmonds, who was in Edmonton that day with, he recalls, Jaasma, Van Rhyn and Lampard and that they were concerned about what the Directors would think when they discovered what had been done.

Therefore, I am satisfied that it is correct to say that Jaasma and Lampard, without the authority of the Directors, caused the company to pledge the Seaboard shares against this loan. The solicitor for Northwest Trust denied any knowledge of the lack of authority from the Directors for this action and I have no reason to disbelieve him.

The minute of the meeting that is acknowledged to have not occurred is Ex. 118 and an executed copy is Ex. 126.

62. See Ex. 126. There was a conflict of interest because Jaasma and Lampard were shareholders in Canamera. They claim that there was no conflict of interest because Cosmopolitan was a subsidiary of Canamera. However, this overlooks the fact that while PAP or Canamera owned a substantial block of shares in Cosmopolitan, neither company in fact owned all of the shares in Cosmopolitan, and any transfer of assets from

Cosmopolitan to Canamera or PAP was in no way to the benefit of all of the Cosmopolitan shareholders. Thus, the clear duty of the officers of Cosmopolitan was to protect all of the shareholders of Cosmopolitan. Since these officers were personally interested in Canamera, there was therefore a clear conflict of interest. They claimed that ultimately it was intended that all of the shareholders of Cosmopolitan would be given shares in Canamera, and all would be well. However, this was for the shareholders to decide and not the officers. And these intentions in no way justified acting in conflict of interest.

63. The documents in this connection are in Ex. 183. There has been some controversy around the execution of these documents. Mr. Arnell's testimony was that these documents were executed after detailed negotiations with the officers of Cosmopolitan. Clearly the threat by Northwest Trust was to foreclose. The inducement they offered was an option back, whereby Cosmopolitan could take back these shares upon repayment of the debt. However, Northwest Trust was given the power to cancel this option and they subsequently did and the reason for so doing was that they felt it was necessary, in order to protect their security, to take control of Seaboard because its affairs were rapidly deteriorating.

Whatever were the motives of the officers of Cosmopolitan in executing these documents, the fact remains that they executed them. The evidence of Mr. Steffanson as to the conduct of Mr. Jaasma during these negotiations is most interesting. His allegation is that Mr. Jaasma was saying different things to different people to encourage them to agree to the proposal of Northwest Trust and that this is why there was subsequent confusion as to just what had been the agreement.

A major accusation against Northwest Trust is that they improperly profited from this transaction. It will be noted that the original loan was for only \$450,000.00 and the security had been valued six months earlier at roughly \$750,000.00. It is on the basis of this that the officers and others have alleged improprieties against Northwest Trust. The substance of the allegation seems to be that the original loan and then the subsequent transfer of the securities for the loan were all part of a devious plot to "steal" Seaboard from PAP and Cosmopolitan. This allegation is complicated by the fact that Northwest Trust may not have been authorized under the *Trust Companies Act* to acquire such a security. The facts in this connection are reviewed in Chapter III.

This allegation is further complicated by the fact that there is an allegation against Dr. Allard,

a principal officer of Northwest Trust, that he had undertaken to supply further financing to PAP and that he subsequently backed out of this and left PAP in a position where it had to default. However, it would appear that if Dr. Allard made any commitment, he made it subsequent to the borrowing of October 1970, and that, therefore, the transaction of October 1970 cannot be excused on the grounds that it was part of a larger commitment. While this is gone into later, I should also observe at this point that any subsequent "commitment" made by Dr. Allard was made on certain conditions that the principals of PAP and Cosmopolitan were never able to meet.

The question of whether or not there remains an equity of redemption in regard to this transaction on the part of Cosmopolitan for which Northwest Trust must account and whether or not in fact Northwest Trust profited on this transaction is basically a private dispute that can be resolved by litigation. However, I should make these observations. In July of 1970, a company associated with Northwest Trust, Allarco Developments, had loaned \$100,000.00 to PAP. (See Ex. 179). Then, on February 15, 1971, it loaned personally to Jaasma and Van Rhyn \$25,000.00, and this loan was guaranteed by Canamera. Again on February 26, 1971 it loaned \$27,500.00 to Canamera (See Ex. 182). Therefore the total indebtedness to Allarco or North-

west Trust by March of 1971 was, not merely \$450,000.00, but \$652,500.00 plus interest.

64. During 1970, Seaboard suffered severe financial setbacks. The accumulated deficit as at December 31, 1969 was \$527,209.00. The accumulated deficit as at December 31, 1970 was \$1,928,210.00! (Ex. 161) Mr. Burnett said this was accounted for largely by the large increase in the staff of Seaboard and expansion of offices during 1970. It is significant, in my view, that in 1970 PAP took effective control of Seaboard. Also, the premium income of Seaboard in 1969 was \$3,289,379.00 and in 1970 \$3,464,869.00. Therefore there was no substantial increase in business to offset the huge increase in expenses. Seaboard sales persons claimed that there was a substantial increase in the numbers of policies sold which would not be reflected in income until 1971. But, I note that the premium income for 1971 was \$3,523,878.00. These figures are all taken from Ex. 161. Thus, it would appear that there was no offsetting income against the huge loss of 1970 and that this loss quadrupled the deficit and, presumably, reduced the value of Seaboard shares by one-quarter in the course of one year. Thus, while Seaboard shares were valued at \$7.00 in December 1979 for the purposes of the transaction with Cosmopolitan, by 1971 a market could not be found for a new issue of Seaboard shares at \$2.50

a share (see the evidence of Mr. Arnell). It is interesting also to note the details of policies written and lapsed by Seaboard during this period as supplied by the B.C. Superintendent of Insurance (Ex. 315). At the end of 1969 Seaboard had 5,945 policies in force. At the end of 1970 it had 7,333. This includes the policies contained in the block of business from Cosmopolitan which, apparently, was roughly in excess of 1,000. But, during 1970, the Seaboard lapse rate doubled from 479 in 1969 to 873 in 1970 and 1,071 in 1971 so that by the end of 1971 Seaboard had only 6,772 policies in force. By the end of 1972 the lapse rate was again down and was 530 policies. A fair inference can be made that the high lapse rate during 1970 and 1971 were lapses of policies written originally by Cosmopolitan and sold to Seaboard, which is nothing more than a continuation of what had been happening to these policies in Cosmopolitan. This inference is confirmed by the officers of Seaboard who complained of the high lapse rate of the policies purchased from Cosmopolitan. Thus, the asset acquired from Cosmopolitan by Seaboard virtually disappeared in the course of the year following its purchase. Thus, this deal was not a good one for Seaboard and this has its effect on the value of Seaboard after that transaction.

One must reasonably conclude that there is considerable evidence that the value of Seaboard shares collapsed dramatically between December of 1969 and March of 1971. The officers of Northwest Trust and Allarco claim that, rather than making a profit, they may have suffered a loss as it is still not clear whether the Seaboard shares have a sufficient value today to cover the amount it cost them to acquire them, let alone making provision for any reasonable return, and all this notwithstanding that after Northwest Trust and Allarco took effective control of Seaboard they were able to turn the affairs of the company around to the point where it began to produce a profit and today is on a sound footing.

65. See Ex. 336.

66. By the time the deposit was turned over to the liquidator it apparently had a value of roughly \$260,000.00, although this was after the sale of securities to a value of \$198,702.58 to replenish the segregated fund. Therefore, it would appear that by 1972 the value of these securities was roughly \$460,000.00. See Ex. 276.

67. See Ex. 276 and the evidence of Mr. McKinnon.

68. See Ex. 85 and the evidence of Mr. Laing and Mr. Van Rhyn.
69. See footnote 27.
70. See Ex. 276 and 309. As mentioned above, I have not attempted to make a precise reconciliation between the calculations of the liquidator and Mr. Geddes'.
71. See the evidence of Mr. Steffanson.
72. See the evidence of Mr. Steffanson.
73. The steering committee came into possession of certain securities belonging to Cosmopolitan. These went from Van Rhyn to Lampard, Jr. to Mansveld and then to Sklar, according to the evidence of Mansveld. Sklar resides in British Columbia and was asked to come and give testimony and refused to do so. He was interviewed by Commission Counsel in British Columbia and he was not co-operative, and it was decided that nothing useful would be gained by any extraordinary effort to obtain testimony from him, as his refusal to co-operate left an inference that was more significant than any testimony by him. Thus, his explanation as to what happened to these assets is not available, but see Ex. 290.
74. See footnote 5.
75. See footnote 7. Any difficulty in reconciliation

of the statement in Chapter II with the statement of Mr. Geddes is accounted for by the fact that I have added the sale price of the equity linked policies into the net operational losses. The figures therein are a re-statement of the figures mentioned earlier in the chapter. It would appear that on the basis of Mr. Geddes' statement (Ex. 309), in addition to the segregated fund shortage and the disposition of the Seaboard shares, there was a further \$200,000.00 in assets of Cosmopolitan that found its way to Canamera or PAP.

76. See the evidence of Mr. Geddes.
77. See the evidence of Mr. Van Rhyn.
78. Mr. Hale's report is Ex. 254. Reference is also made to this matter in Ex. 253, 255 and 256.
79. The most coherent report of the organization of these companies comes from the evidence of Mr. Olthius.
80. This is stated by all of the principal officers in their evidence.
81. According to Mr. Jaasma, the Sioux company was

organized to provide a vehicle for control and then people who had been left out of Sioux who were smaller investors wanted in, and therefore PAP was organized for that purpose. Compare this with the description of a meeting given by Mr. Richter in his evidence before the Securities Commission. The transcript of this testimony is in Ex. 255. An attempt at a detailed study of the financial relationships between PAP and Sioux was done by Mr. McKinnon shortly after his arrival at the Insurance Branch and this is Ex. 99. It is my conclusion that my analysis in Chapter II of these events is correct.

82. It was never entirely clear just exactly how many shares in Cosmopolitan PAP had acquired. It is known that they acquired at least 50,000 shares as this matter can be documented and it would appear that they did have a controlling interest although this fact was never tested by anybody. It is, however, equally clear that PAP did not acquire all of the shares of Cosmopolitan. See for example the evidence of Mr. Joosten.

83. See the evidence of Mr. Olthius. See also Ex. 99. As mentioned above, it was for some time a matter of concern on the part of Mr. McKinnon that some effort be made to get capital flowing from PAP to Cosmopolitan but the records in this respect were extremely inadequate

and no resolution of this question could ever be made. In any event, the capital soon began to flow in the opposite direction.

84. Principal among these were the disputes with Mr. Marien and Mr. Dezwart. The Dezwart matter was investigated by Mr. McKinnon and by Mr. Hale and is most complicated and was not pursued before me. Mr. Marien retained counsel and was successful in recovering his entire investment!

85. See Ex. 99.

86. The common directors were principally Van Rhyn and Lampard. Jaasma claims he was never a director of PAP, but this fact came as a great surprise to all of the other directors. It would appear that if Mr. Jaasma was not a director he certainly acted like one.

87. See the evidence of Mr. Van Rhyn.

88. See the evidence of Mr. Olthius.

89. See Ex. 99 and the evidence of Mr. Olthius and Mr. Sieben.

90. See the evidence of Mr. Van Rhyn.
91. See the evidence of Mr. Van Rhyn.
92. See the evidence of Mr. Van Rhyn and Ex. 99.
93. See the evidence of Mr. Van Rhyn and Ex. 325, p. E7.
94. These include Van Rhyn and Lampard.
95. The sales pitch is well documented in Ex. 213.
96. See the evidence of Dr. Lampard.
97. See the evidence of Mr. Riddle, Mr. Olthius and Mr. Mansveld.
98. See the evidence of Michael Lux. There was a great deal of evidence from Mr. Lux about his dealings, not only with PAP but also with the Canadian Imperial Bank of Commerce, and he alleges that the Canadian Imperial Bank of Commerce improperly dealt with funds of PAP and of his and of the companies involved in the farming operations. While I did hear a great deal of evidence from Mr. Lux on this, and a considerable amount of evidence and rebuttal from the Canadian Imperial Bank of Commerce, it is my view that this is essentially a

private dispute between Mr. Lux and The Canadian Imperial Bank of Commerce that should be resolved by litigation and upon which I therefore make no comment. I heard this evidence largely in order to determine if it would lead me to any significant facts that would help to explain the failure of PAP Holdings Ltd. To this extent it did because Mr. Lux was able to give further testimony as to the manner of operation of PAP, of Mr. Jaasma and Mr. Van Rhyn, and, more specifically, the almost total lack of planning of the affairs of PAP and the dominance of Mr. Jaasma in its operations and of the complicated banking transactions in which they were involved, and the manner in which the company conducted its banking operations. But, aside from this, the details of this transaction are not, in my considered opinion, worthy of further comment, nor ought I to comment on the outstanding dispute between Mr. Lux and The Canadian Imperial Bank of Commerce.

99. It would appear from the testimony of Jaasma, Van Rhyn and Lampard and also Olthius that the transaction with respect to the airline never advanced beyond the taking of an option and the subsequent forfeiture of the option and that the transaction for the completion of the radio and television station was

never completed. Various reasons were given for this. The real reason seems to be that, when the time came, there were more pressing needs for the money elsewhere and money was not available to complete the transactions and they were left to fold at a loss to PAP.

100. The Balmoral Block was mortgaged, the farm properties were all mortgaged, shares in companies that had been acquired such as shares in Seaboard or NWL Financial were pledged on bank loans. See the evidence of Mr. Van Rhyn, Mr. Lux, Dr. Lampard and Mr. Jaasma.

101. There was a foreclosure on the Balmoral Block for default. See the evidence of Mr. Arnell in this respect. Mr. Lux, after PAP defaulted on the mortgage on the farm properties, negotiated a transaction to take these over. I consider it a private dispute for resolution between PAP and Mr. Lux as to who gained or lost on that transaction, if indeed Mr. Lux has any obligation to account to PAP. There was some suggestion that there was something the matter with the fact that the mortgagee was foreclosed. I do not understand why a mortgagee should not be free to foreclose when the mortgagor does not make the payments.

102. See the evidence of Mr. Riddle. It would appear

that Mr. Riddle was not made to account for the monies he had received from PAP when he received a transfer back of this business. Also, there was some doubt raised as to whether or not the documents in this connection were executed on behalf of PAP by anyone having authority. This, however, is a matter of private dispute to be resolved between PAP and Mr. Riddle.

103. See the evidence of Mr. Mansveld and Mr. Olthius. The problem appeared to be that money was needed beyond the purchase price to get Specialty Metalcraft underway. This firm had the idea of entering into the manufacture of filing cabinets and, as I understand Mr. Mansveld's testimony, never did actually get underway in this respect while PAP was involved. Because PAP could not produce the necessary working capital and did not wish to make any further payments, a transaction was entered into with Mr. Mansveld, who had been asked to help out in this respect, whereby Mr. Mansveld bought the business from PAP. His company did agree to pay back to PAP what it had invested but PAP then pledged this security on a further loan upon which a default was made, and lost that asset. If Mr. Mansveld gained or lost on this transaction with PAP, this is a matter of private dispute between him and PAP which may be resolved by litigation. But it

would appear that it was sold to Mahnsveld for a fair price under the circumstances.

104. See the evidence of Mr. Lux. It is almost impossible at this stage to calculate exactly how much was lost in this respect and I was of the opinion that it was not necessary for the purposes of this Inquiry to calculate that sum.

105. This became a matter of dispute between Cosmopolitan and Seaboard. Peter Van Rhyn Agencies was a firm name used by PAP Holdings Ltd. in conducting the insurance selling operations. A term of the agreement between Cosmopolitan and PAP was that PAP would receive a renewal commission on all renewal premiums received and the agreement between Cosmopolitan and Seaboard was that Seaboard would honour the commitments of Cosmopolitan under this agreement. The principal officers of PAP claim that Seaboard has defaulted under this agreement. The officers of Seaboard respond that it was an explicit or implicit term of the agreement between Seaboard and Cosmopolitan and PAP that Peter Van Rhyn Agencies would not receive a commission on renewal premiums unless the policies were in fact serviced by Peter Van Rhyn Agencies and also that Peter Van Rhyn Agencies would not sell for any competing insurer.

When a firm including the name "Peter Van Rhyn" subsequently obtained a license as a sales agent for another insurer, this was considered a default by Seaboard. Also, Peter Van Rhyn Agencies ceased carrying on business at least from early 1971, and it was necessary for Seaboard to service the policies. Thus Seaboard claims that there was default under the contract and they are not liable to pay. This is another matter of private dispute that may be resolved by litigation and I do not think, therefore, that I ought to express an opinion on it.

106. The Balmoral Block was owned by a company the principal shareholder of which was Dr. Lampard. Specialty Metalcraft was owned by a company the principal shareholder of which was Mr. Olthius. Riddle Agencies was owned by Mr. Riddle. A portion of the farm properties was owned by Mr. Lux, but it would appear that he did not become a director until the time of the acquisition. Peter Van Rhyn Agencies was, of course, owned by Peter Van Rhyn.

107. It was Mr. Van Rhyn's evidence that there were no independent valuations. In the case of the Balmoral Block I note that the valuation by the mortgagee when PAP mortgaged the property, and again the valuation at

time of foreclosure, would indicate that the valuation at the time of the sale by Lampard was substantially more than the real value of the company. It should be noted that this transfer was for shares in PAP and not for cash.

108. During 1969 the negotiations with Seaboard turned to the transfer of the Cosmopolitan business to Seaboard in return for shares in Seaboard as has been earlier noted. At the same time during 1969, PAP purchased Seaboard shares. The president of Seaboard was privy to this and it was understood between PAP and Seaboard that an aspect of the transaction between Seaboard and Cosmopolitan and PAP was that PAP would have control of Seaboard. It should be noted that there was a group of shareholders in Seaboard that were strongly opposed to this. See the evidence of Mr. Elrix and Mr. Burnett and Mr. Seed.

109. See p. 1505.

110. See the evidence of Mr. Seed and Mr. Burnett.

111. See the evidence of Mr. Burnett.

112. See the evidence of Mr. Burnett.

113. This is the actuarial value of the business sold by Cosmopolitan to Seaboard plus the cost of the additional shares bought by PAP in Seaboard at a cost of approximately \$7.00 per share. See the evidence of Mr. Van Rhyn.
114. See the evidence of Mr. Seed and Mr. Van Rhyn, who give a relatively coherent description of the plans.
115. The details of this matter are in Chapter III.
116. Both Seaboard and CBH were B.C. companies. See Ex. 94 and 95.
117. The details of this are in Chapter III.
118. The details of this are in Chapter III.
119. Canamera was a public British Columbia company. See Ex. 43. Rocky Holdings Ltd. was an Alberta company which was a corporate shell made available by Olthius for this purpose. See Ex. 40 and the evidence of Olthius.
120. See the evidence of Olthius. The idea basically was to establish the same scheme as had been established

with Sioux and PAP.

121. Several witnesses said that the arrangements were that one had to "earn" one's way into Rocky Holdings Ltd. by being responsible for a certain amount of investment in Canamera or PAP. One was to pay \$4,000.00 per unit in Rocky, but some didn't have to pay that and some paid nothing. Rocky held all the voting shares in Canamera. Jaasma and Lampard, of course, held shares. It would appear that, as with Sioux and PAP, the relationship between Rocky and Canamera was not kept clear in that people were allowed to invest directly in Rocky without reference to Canamera.

It is also interesting to note that about the time when everything was collapsing in February and March of 1971, certain sums were removed from Rocky to Jaasma, Van Rhyn and Lampard. They claim that this was all the repayment of loans earlier made by them, but we could not find any adequate books or records of Rocky Holdings Ltd. and make any determination about this.

Another interesting aspect of the story with respect to Rocky Holdings Ltd. is that, after he went on the steering committee, Mr. Sklar issued all the remaining unissued stock to himself and a friend (see the evidence of Mr. Steffanson) and proceeded to treat this

company as his affair. According to Mr. Steffanson the books of Rocky Holdings are presently with Mr. Sklar. As mentioned above, Mr. Sklar refused to come and give testimony and was not co-operative with Commission Counsel. It would appear, too, from the evidence of Mr. Steffanson that some rather curious activities took place in the subsequent history of this company. This company is, however, still in good standing today and in the control of Mr. Sklar. It is unclear to what extent it holds assets of the original investors as the records are so inadequate that one cannot make a determination. If, however, any investors in that company have any lawful claim, this is a matter that can be resolved by litigation and there is nothing more I can say.

122. This was the evidence of all of the principals in PAP as to what was to happen and it is because of this intention that they justify the indiscriminate mixing of assets of the two companies.

123. There is a minute of a meeting of April, 1970, purporting to transfer all of the assets of PAP to Canamera. See Ex. 47. Yet, in early June, 1970,

according to Van Rhyn and Lampard, there was a meeting of the shareholders of PAP and a report to them on these assets as though they were assets of PAP! See also Ex. 14, which is a takeover bid issued by Canamera on Seaboard and subsequently withdrawn. On p. 14 they refer to transactions on April 22 and August 30, 1970 between PAP and Canamera for the acquisition of PAP assets. See also Ex. 66.

124. Mr. Ferris, for example, gives evidence of buying shares which he understood were in Canamera in May or June of 1970 for \$50,000.00 (p. 2019), yet Mr. Oaks and others were buying shares or investing in some form in PAP at the same time. See Mr. Oaks' testimony.

125. The most understandable explanation of the manner of proceeding at the time is the testimony of Mr. Harry Seed.

126. These negotiations took place in June and July of 1970. I can find nothing in the evidence to indicate that there was ever any intention of entering into this transaction until after the failure of the CBH transaction. The awareness of this failure occurred sometime between May 18, 1970, when NWL made the deal with CBH (see Chapter III) and June 17, 1970, when the

annual meeting of CBH was held and control taken by NWL (see Chapter III). It was my impression from the testimony of Mr. Jaasma (p. 92) that it was after the failure of the CBH transaction that they were approached by Residential Resort Developments with a view to RRD selling its shares in NWL to PAP. This transaction was completed on July 7 (Ex. 8). Therefore, the negotiation of this transaction must have occurred over a space of only a matter of weeks, if not days. Jaasma pinpoints the discussions as June, 1970 (p. 96). There is no suggestion by anyone of any idea by PAP to take over control of NWL prior to that date. Thus a four million dollar transaction was entered into (see footnote 129) without any advance planning and apparently after only consideration for a matter of weeks, probably the most critically important fact in the history of PAP.

127. See the evidence of Mr. Ropchan.

128. See the evidence of Mr. Jaasma.

129. See Ex. 8.

130. It will be noted that the commitment to RRD was for twice as much money as was ever raised in total throughout the entire history of PAP.

131. It was after July of 1970 that the apparent decision was made not to proceed with the takeover of the airline or the radio and television station and default began to be made in other obligations of PAP as all monies available were used to satisfy the commitments under this agreement.
132. See the evidence of Mr. Seed, Mr. Oaks, Mr. Sieben, Mr. Steffanson, Mr. Mohana and Mr. Richter.
133. See the evidence of Mr. Sieben where he suggests that the company began, by June of 1970, to exceed the number of shareholders limited by law and trust funds were set up whereby one shareholder would hold shares in trust for others. See the evidence also of Mr. Steffanson who says that he was encouraged to invite investment in Saskatchewan and received commitments totalling in excess of \$300,000.00. Then, the Saskatchewan Securities Commission intervened and the money was returned. But, it was suggested to Mr. Steffanson that he could personally borrow the money from the Saskatchewan investors and then personally loan it to PAP or Canamera, and the money thus came back to the company in this form.
134. According to Ropchan (p. 311) there were at that

time 2,250,000 shares of NWL outstanding, of which he held 100,000 shares and RRD held 668,000. The significant factor, however, is that the RRD group were not participating in the management of the company, notwithstanding the fact that they were the largest single shareholder in the company.

RRD has been the subject of considerable adverse publicity in British Columbia. Copies of some newspaper accounts are in Ex. 33. The substance of the allegation was that a senior officer of RRD was allegedly the son of a man who was alleged to have been held responsible by a Royal Commission Inquiry in the Bahamas for introducing members of the United States underworld into the management of a casino in the Bahamas. Apparently the then Leader of the Opposition in B.C. called on the Attorney General of B.C. to assure the people of B.C. that these Bahamian interests would never be allowed to gain control of the Northwest Life group of companies. (All of this is taken from news accounts in Ex. 33.) The B.C. Securities Commission banned the completion of a tentative agreement between Ropchan, Libin and RRD for the sale of the shares of these gentlemen to RRD, in addition to the 668,000 they already owned, so that in effect RRD was not to be allowed to participate in the management of NWL. Thus it was that not only did the RRD shares not

have any voice on the Board of Directors, but were themselves the subject of considerable public controversy. They had, also, sued NWL on an alleged breach of contract in this respect.

135. See the evidence of Jaasma and Lampard. I should add that they also say there was an arrangement for a public underwriting but could not produce any documents in this respect. They said that Mr. Sklar had made these arrangements, but Mr. Sklar would not appear before the Inquiry or co-operate with the Inquiry. Since nothing could be produced to support an allegation of there being any kind of commitment, and since the promoters spent the rest of 1970 desperately raising money, I can only conclude that in fact there was no binding commitment ever achieved and the entire venture was, therefore, speculative. PAP/Canamera might reasonably have been able to get an underwriting for a stock offering and the public might well have been interested in investing if there was an agreement to actually amalgamate NWL and the other insurance companies. Thus, a critical aspect of this transaction was to negotiate an agreement to amalgamate.

136. There were only four possible ways to have NWL agree to such an amalgamation:

(1) The present management be agreeable. But, as has been seen, NWL was party to an effort to stop a similar scheme with B.C. Life, so manifestly they were not agreeable.

(2) Take over management by acquiring absolute control of NWL (that is, over 50% of all stock). This PAP simply did not have the money to do, and any such effort was made more difficult by the fact that, after the CBH takeover, NWL issued more stock which it indirectly controlled. See the evidence of Ropchan. But while he protests that this was coincidental to the Jaasma takeover effort, it certainly did not make that effort any easier.

(3) Take over management by a proxy fight. This was not tried, probably because it was doomed not only because of the bad reputation of the RRD group, but also because of the reputation of the PAP group and the strategies of Ropchan's noted above.

(4) Negotiate a takeover of control from the controlling group, which would necessarily involve the purchase of their personal holdings at a nice profit and then actual delivery of control to the PAP group, i.e., the election to the board of a majority of directors sympathetic to the PAP ambitions. This was the only option open to PAP that was at all viable.

137. Ropchan made it a condition that they make similar offers to other Directors as otherwise he would be embarrassed by having sold out his interest to them without the knowledge of the other Directors. Also, even Ropchan's shares were not enough to achieve control, so they made deals with other Directors as well. Some of them, according to Van Rhyn and others, were paid in cash. See the evidence of Ropchan and Van Rhyn.
138. See footnote 139.
139. Ropchan's evidence is that he offered to resign as president whenever asked but made no further commitment, and could not make any further commitment as he did not personally control the company and therefore could not guarantee the resignations of the Board or election of other persons to the Board. Indeed, he says that the Board would not agree to *any* representation on the Board of the "RRD shares" because of the outstanding suit against NWL by RRD. See the evidence of Ropchan and footnote 134. Jaasma claimed that Ropchan did make such a commitment. However, the document Ex. 31 contains no such commitment. According to Olthius, when the Directors of PAP/Canamera were considering the execution of Ex. 31, he opposed this on the grounds that the company still had not made arrangements to

actually acquire control of NWL. Therefore, the agreement with Ropchan did not in any significant way solve the problem that the promoters had. He also says that the solicitor of PAP/Canamera recommended not entering into the transaction because it lacked these kind of commitments. They all agreed that these conditions would be asked of Ropchan (p. 980). He then gives evidence that Jaasma said that Ropchan would not agree to such an agreement, and subsequently Ropchan did refuse and says in his testimony that he specifically told his solicitor that he would, under no circumstances, agree to that form of agreement. An example of what should have been in that agreement was termed 3B in Ex. 23, the agreement between NWL and CBH for the take-over of NWL by CBH. See footnote 142.

140. See the evidence of Ropchan and the evidence of Olthius that an agreement containing such a commitment was submitted to Ropchan and he refused to sign it (p. 980).

141. It is unclear who actually agreed to the agreement. Olthius says that he did not see it until after it was signed. (p. 981) It was he, also, who said that it was entered into against the advice of solicitors and himself. See footnotes 139 and 140.

142. Jaasma and Lampard say that Ropchan did make such a commitment to deliver control of NWL, and that RRD made a commitment to provide an underwriting of a public offering. But Olthius, who participated in both sets of negotiations, gives evidence that Ropchan refused to enter an agreement with such a commitment (p. 980) and that RRD had refused to enter into a contract with such a commitment (p. 968). So it is quite clear that there was no agreement on anybody's part to arrange for an underwriting or to arrange for the delivery of control of the Board of NWL so that an agreement for amalgamation with Seaboard could be made so that an underwriting could be negotiated. What obviously Jaasma and Lampard instead expected was that somehow or other they, themselves, or Sklar would be able to complete the transaction. But as late as February 24, 1971 (Ex. 7), in their last desperate attempt to salvage the transaction, the commitment they received from Dr. Allard for Allarco Developments was that the advance of funds would be conditional upon "the resignations of present Directors necessary to give your nominees clear-cut control of the Board of Directors and control of the various subsidiary companies of Northwest Financial". So, the problem in the beginning was also the problem at the end.

143. At this time, NWL shares were trading for \$3.50 to \$4.00. See Ropchan's testimony (p. 337). Jaasma justified paying the higher price because there was a question of control involved. Yet, as has been seen in the foregoing, RRD stock represented anything but control. Also, because of all the unfavourable publicity it received, RRD was obviously very anxious to sell because they had been effectively barred from control or any voice in management of the company. Thus, one would rather have thought that it was RRD who were in the weaker negotiating position. In fact, in 1971 RRD sold the shares in question, after PAP/Canamera default, to Ropchan at no more than \$2.00 a share.
144. The NWL shares already purchased were pledged to banks. The Seaboard shares purchased by PAP were pledged to banks. The Seaboard shares owned by Cosmopolitan were pledged to Northwest Trust. Every other asset that remained that had not already been pledged, was pledged. The proceeds of the Cosmopolitan borrowing, \$450,000.00, were transferred to Canamera and used to pay some of the payments. \$400,000.00 was obtained from Mr. Ferris and was used to pay some of the payments. \$300,000.00 was raised by Mr. Steffanson and used to make some of the payments. Thousands of dollars were raised from other investors. \$85,000.00 in securities of Seaboard were pledged to the bank against a

borrowing by Canamera to be used in this respect. \$65,000.00 was also taken from the segregated funds of Cosmopolitan.

145. An extension of time was granted to the end of December and then default was made, as acknowledged by Van Rhyn.
146. See the evidence of Van Rhyn.
147. The default on the December 15 payment to Ropchan was publicized in the Edmonton Journal on December 31. See Ex. 125. During January last minute efforts were made to see if Allarco could bail the company out, but by the end of February it became clear that these efforts would fail because the essential ingredient, control of NWL, could not be obtained. Dr. Allard himself met with the Directors to see if there was any possibility of an arrangement with them and gives evidence that he quickly discovered that there was no way they were going to give up without a fight. Thus, by the beginning of March, Northwest Trust began to press, and the Government began to press because they had discovered the shortage in the segregated funds. The Canadian Imperial Bank of Commerce began to press. See the evidence of Dr. Allard, Mr. McKinnon, Mr. Dansereau, and Mr. Hull.
148. RRD granted an extension of time to PAP (Ex. 9) but this was of no assistance.

149. Apparently to raise money for the January payment, investment was obtained from Dr. Lewis in January, 1971. Also in that month, \$65,000.00 was transferred from the segregated fund of Cosmopolitan to the Canamera account and \$85,000.00 of securities belonging to Seaboard were pledged on a borrowing on the Canamera account.
150. On March 10 the Allarco group of companies decided they could wait no longer and obtained the transfer from Cosmopolitan of its Seaboard shares. Also, in their attempt to improve their position, they purchased the PAP Seaboard shares from the Canadian Imperial Bank of Commerce for a negotiated price which was applied against the balance owing to the Canadian Imperial Bank of Commerce by Canamera. Thus, all of the shares in Seaboard were lost to creditors. NWL shares that had been purchased outright were sold and those that had been pledged either to the Royal Bank or the Canadian Imperial Bank of Commerce were sold by the banks to pay debts. Default was made on the mortgage on the Balmoral Block and it was foreclosed. Default was made on the farm properties and they were lost. Default was made on Specialty Metalcraft and it was sold. The securities on deposit with the Government had been pledged also to Northwest Trust, but, when

they discovered that they were subject to any call on the segregated fund shortage and it was unclear when that situation would be resolved, they elected to release that security and execute securities against the Seaboard shares instead. Thus, the only asset of any company that was free of any pledge was the Government deposit, but it was subject to the segregated fund shortage which, upon final resolution, as has been noted, was \$198,000.00. The only other asset of PAP unpledged to anyone was its shares in Cosmopolitan through which it could claim its share of the remainder of the Government deposit. There were also a few incidental assets remaining.

151. This is the total of payments one, two, three and five.
152. See the evidence of Mr. Steffanson.
153. See the evidence of Mr. Steffanson.
154. See the evidence of Mr. Steffanson and Mr. Mansveld.
155. See the evidence of Mr. Steffanson, Mr. Sieben and Mr. Mansveld.

156. See the evidence of Mr. Steffanson and others where they acknowledge that at no time was there a formally constituted shareholders' meeting and the election in any lawful way of any officers or directors. Notwithstanding this, there are documents in the Exhibits indicating that Gerald Sklar held himself out to be the duly authorized officer of at least some of these companies.

157. See footnote 73. Also, ironically, during this period the shares of Cosmopolitan owned by PAP and subsequently transferred to Canamera were seized by an execution creditor. This amounted to 50,000 shares, or a significant percentage of the total outstanding shares in Cosmopolitan. As today in liquidation Cosmopolitan has assets remaining of approximately a quarter of a million dollars, these shares had some significant value. Retention of them would have enabled the shareholders to recoup at least something. However, they were seized by the sheriff on behalf of a judgment creditor and put up for sheriff's auction. Ultimately they were purchased on a tender by Mr. George Berge, C.A. Some members of the steering committee were of the opinion that Mr. Berge was to deal on behalf of the other shareholders in this transaction. But it is clear that no other shareholder that he contacted was prepared to contribute any money to recover these shares,

notwithstanding his efforts to organize something, and that when he finally did act he acted alone. Any suggestion that he had agreed to act on behalf of others in acquiring these shares seems to have come from Mr. Sklar, who would not appear to give evidence. As any responsibility by Mr. Berge to the shareholders of PAP is a private dispute and might be subject to litigation, I should not comment further. However, I would like to observe that all of this arose because the shareholders had failed to put persons into office in these companies to properly conduct their affairs. No effort had been made even to put PAP or Canamera into liquidation, at least as of the commencement of this Inquiry. Thus, the shareholders failed to take the steps that were available to them to protect their interests in this respect.

158. See the evidence of Mr. Van Rhyne and of Mr. Geddes. Note also Ex. 336.

159. When Mr. Jaasma approached the Government to authorize incorporation of Alberta insurance companies, a major argument was that this would enable money to remain invested in Alberta rather than to be invested in the east. In this regard one should examine Ex. 336 which is a list of the securities held by Cosmopolitan on

the Government deposit in 1970. Of the total sum of approximately one-half million dollars, \$70,000.00 was invested in debentures of the City of Montreal, \$10,000.00 in a debenture of the Government of New Brunswick, \$10,000.00 in a bond of the Consumers' Gas Company (an Ontario company), \$20,000.00 in a debenture of Dominion Steel and Coal Corporation (an eastern venture), \$20,000.00 in debentures of the C.N.R., and \$25,000.00 in bonds of the Government of Canada!

160. See Ex. 226, a newspaper clipping of a statement made by a member of the government of the day.

161. See Ex. 105. It is interesting to note that he raises the following arguments:

1. Assets would be invested in Alberta. In this respect see footnote 159. Apparently the City of Montreal is located in Alberta!

2. "There would be a great interest amongst underwriters and trained personnel to represent such an Alberta company." See Ex. 325 where, approximately eight years later, the actuary reports that "the company has been unable to date to develop a satisfactory sales force and the company relies heavily upon the continuing production of business by Mr. Jaasma" (p. H1).

162. See the arguments raised by the Minister in Ex. 105.
163. At that time insurance companies were exempt from the application of the *Insurance Act* and so remained until 1967, when the *Securities Act* was amended by the Legislature. See Chapter III.
164. There was never any underwriting of the Cosmopolitan stock and all selling was done on a personal basis. In this respect in the raising of the minimum capital and their capital until 1966 seemed to be almost entirely by Mr. Jaasma, according to the information developed by Mr. Hale. See Ex. 255.
165. See the Hale Reports, Ex. 253, 254, 255 and 256.
166. See the Hale Reports.
167. See the evidence of Mr. Van Rhyn and of Mr. McKinnon.
168. See Ex. 325, which has been earlier referred to, and which shows that the company had lost irrecoverable sums and had not been growing as it should have. See also footnote 36 and a memo dated May 14 in Ex. 107,

being an assessment of the true state of affairs by the consulting actuary of the company. See also the letter to Cosmopolitan from the B.C. Superintendent of Insurance dated October 5, 1965 (in Ex. 109) where he observes that in his opinion the volume of insurance sold was no more than could have been generated from shareholder leads and "this demonstrates to me that the company has not yet shown any ability to sell life insurance to the general public".

169. This situation was the source of anguished consultation between the Deputy Provincial Secretary, Mr. Howard, and Chairman of the Securities Commission during 1966 and 1967 which led to the amendment to the *Insurance Act*.

170. This was legitimate because neither company was listed on a stock exchange and the larger stock broking firms would not usually be very interested in handling transactions of small ventures like this. Therefore, in the absence of any other stock broker taking an interest in handling these transactions, it was necessary for principals of the companies in question to set one up.

171. In the memo of the investigating officers dated

January 12, 1966 (which is in Ex. 251, the file of the Securities Commission in this respect), on p. 13 they state that there is no true market and that they are not brokers but principals in both buying and selling and that in both cases it is Albert Jaasma doing the work.

172. See the evidence of Mr. Joosten, where he says that his friends had been sold shares in Cosmopolitan by Albert Jaasma on the understanding that if they ever needed to sell them he would arrange for it, and then when his friends did need to sell them he received an explosive attack from Jaasma for trying to undermine the company by encouraging people to sell shares. This attack is in the letters of Ex. 247.

173. This is noted in the report of the investigators in Ex. 251 and was also investigated by Mr. McKinnon. As is noted in the report in Ex. 251, the staff of Cosmo-West said that if Jaasma ran out of a subscription form he would simply use a secondary market form and that therefore a person who had purchased stock and signed a subscription form would not necessarily understand that he was subscribing for stock, and alternatively a person who signed an application to purchase

stock on the secondary market would perhaps understand he was buying treasury stock. Subsequently Mr. Hale looked into this and his general impression was that the investors were so unsophisticated that one would never know who intended to purchase treasury stock and who did not. This is mentioned particularly because Mr. McKinnon pressed on several occasions for an effort to have the money subscribed for on subscription forms turned over to Cosmopolitan to be put in its treasury. He complained that the Securities Commission never acted on this suggestion. The difficulty was that the situation was such a mess that it was impossible to do anything about it and that, at any rate, the person who would have to do something about it would be Cosmopolitan (that is, Cosmopolitan would have to demand payment from alleged subscribers, and it was not likely that Cosmopolitan would make such a demand as long as Albert Jaasma was around).

174. I refer again to the memo of January 12 in Ex. 251 where the investigator reports that the market was totally artificial and that "if the secondary market for these shares were closed down, I feel there would be a sudden decrease in the market value of the insurance company shares. I think a considerable number of people would be badly hurt financially and without warning."

175. See the evidence of Albert Jaasma.
176. See the evidence of Mr. Olthius and Mr. Van Rhyn.
177. The best example of this is from the evidence of Mr. Richter in the Hale Inquiry Ex. 255 where he describes a meeting in Sundre, Alberta, where Mr. Richter had gathered all his friends and neighbours to hear Mr. Jaasma make his pitch. According to Mr. Hale, over \$100,000.00 was raised as a result of that meeting in February, 1966.
178. See the memo of June 10, 1970 which was circulated to shareholders who were not at the shareholders' meeting earlier that month (Ex. 119, Document 1) It should be observed that this statement was made at a time when most of these assets had already been transferred to Canamera, that the Directors had already agreed to dispose of Specialty Metalcrafts, and that in fact they had not acquired either the radio-tv station or the airline and never did.
179. See footnotes 46 to 51 inclusive.
180. See footnote 78. After Mr. Van Rhyn left the credit union he sold life insurance for a while with

Mr. Jaasma and then, in December 1967 he took over as General Manager of the Cosmopolitan Life Insurance Corporation. His previous administrative experience seems to have been limited to the management of a small credit union office. But wherever Mr. Jaasma went, there was Mr. Van Rhyn right behind.

181. See the evidence of Dr. Lampard. It was his evidence that he personally kept the situation under control until it "went over the mountains", that is, when the Seaboard transaction was completed and Jaasma moved to Vancouver. He also says that he sent Olthius to Vancouver so as to have a trustworthy eye on affairs. But in September of 1970 he apparently ignored Olthius' suggestion that they not enter into the transaction with Ropchan and ignored Olthius' suggestion in October of 1970 that the company not make the payment then due to RRD as there was no hope for completion and they ought to cut their losses. He acknowledges Olthius' objection but said that he brushed it aside because it was not expressed very strongly (p. 1261-1262). Shortly thereafter, Olthius resigned as a Director and employee and left this affair and Vancouver.

182. His words are, "I'll admit frankly that I was an innocent very much so among financial wolves and that probably I was inept even as an innocent." (p. 1220)

183. His ineptitude was amply demonstrated by his agreement to go into the RRD deal without knowing where it was going to lead them and into the Ropchan deal against the advice of counsel. He says it was his experience that Albert Jaasma would exaggerate things but there was always a solid basis for what he said, and therefore one had to treat anything he said with circumspection (p. 1259-1261). Nevertheless, he admits, he often relied on what Jaasma said to him. A good example of the base of solid truth upon which an exaggeration is built is outlined in Chapter III, dealing with Mr. Jaasma's allegations against Mr. Hinman. He says there that a company of which Mr. Hinman was a shareholder had a real estate listing on a firm called Edmonton Produce which was sold to Ogilvie Five Flour Mills through the efforts of Mr. Jaasma, and on the basis of an agreement to share the selling commission with Mr. Jaasma, and that subsequently Mr. Hinman said that he would not share the selling commission with Mr. Jaasma but instead would arrange for Mr. Jaasma to get Cosmopolitan Life incorporated. The "solid basis" is that, in fact, Edmonton Produce was sold to Ogilvie Five Flour Mills. All the rest is "exaggeration", to use Dr. Lampard's words. One must regretfully conclude that a man who can work with another man for four years who is capable of such exaggerations on such little

solid basis is himself either a fool or a knave.

184. Lampard describes himself as exerting a restraining influence on Jaasma and often being in conflict with Jaasma. This is not reported by any other Directors or officers who gave testimony.
185. See footnote 14.
186. See footnote 44 and 45.
187. See Chapter III.
188. See Ex. 251.
189. This is because of the amendment to the *Securities Act* in 1967. The full scale investigation was the Hale Inquiry. See Ex. 253.
190. See Chapter III.
191. The word 'clean' was used by Mr. Olthius (p. 959). He uses the word clean in the context of making a distinction between clean Canamera and dirty PAP and Sioux, which is as close as any of the officers involved admit to the truth of the matter.

192. This is after the sale to Seaboard as earlier noted.
193. See the evidence of Dr. Lewis. See Ex. 293, a letter written to the shareholders saying that Canamera shares were held by Northwest Trust to be issued in exchange for PAP shares (see p. 3053).
194. See the evidence of Dr. Lewis as an example.
195. See the evidence of Dr. Lewis as an example.
196. See the evidence of Dr. Lewis as an example.
197. See the evidence of Mr. Mohana.
198. As has been observed earlier, this four million dollar transaction was entered into with no advance planning or consideration. The entire dealings from commencement of negotiations until completion were sometime between May 18 and July 7. Jaasma admits that the first dealings with RRD were after the failure of the CBH matter. See footnote 126 where the evidence in this respect is gone into in some detail.
199. This matter is gone into in detail in footnote 139.

200. That they were successful in raising the money that they did is testimony only to their capacity for dishonesty. See the evidence of Mr. Ferris, Dr. Lewis, Mr. Mohana, Mr. Oaks, Mr. Richter, Mr. Riddle, Mr. Sieben, Mr. Simmonds, but especially Mr. Spinney.
201. These complaints are reviewed in detail in Chapter III.
202. According to Jaasma and Lampard, the failure of PAP was caused by the failure of Dr. Allard to live up to a commitment to finance the transaction. But Jaasma acknowledges that no commitment was sought from Dr. Allard at the time of the agreement with RRD or the agreement with Ropchan. After the agreement with Ropchan, a commitment was sought for \$450,000.00 from Dr. Allard and he made this loan. The suggestion of a commitment by Dr. Allard does not arise until November or December, 1970 according to Jaasma and Lampard. This is long after the PAP/Canamera commitments had been made. Hence the example given in the text. At any rate, much of what they said should be understood in the proper context of what they apparently meant by 'commitment'. A commitment to them apparently was a statement that perhaps money would be made available. Thus, for example, both of them point to the letter of February 24, 1971, as a commitment letter. This is Ex. 7.

But, to the extent that that letter is a commitment, it is a commitment conditional on the taking over of control of NWL by PAP, which it failed to do. Thus, even putting their story at its best, Dr. Allard did not fail in a commitment, rather they failed in a reasonable and necessary condition to the commitment.

Jaasma alleges that Dr. Allard had earlier made a commitment in December of 1970 and that he repeated that commitment in Mexico and actually signed a document. Unfortunately he could not produce the document. Dr. Allard denies it, and nobody else admits to having seen it. The grain of truth in Jaasma's testimony seems to be a commitment by Allard to try to help. All the rest is "exaggeration". Even if Dr. Allard did make a commitment in Mexico, Jaasma acknowledges that it was subject to approval by fellow Board members of Dr. Allard. Even if Dr. Allard succumbed to this device, which he denies, one could hardly criticize him for doing this knowing full well that his fellow directors would not agree, merely in order to remove from his presence a man who had come uninvited to interrupt his vacation to talk business on Christmas Day! I also refer to Document 19 in Ex. 119, a copy of a letter from Jaasma to Allard, dated January 18, 1971, at a time when Allard was supposed to have been in default of a commitment. In that letter Jaasma says, "I also appreciate very much

the patience the trust company has shown us, and hope to have the situation cleared up in the next two to three weeks. As you know, we have paid \$150,000.00 for the shares of Messrs. Buckwald and Libin and to-day are making arrangements with Slater Walker for which we had to have \$200,000.00 available. Dr. Lampard and G. E. Sklar are at present negotiating the final terms.

I am still looking for a major finance contract on approximately 700,000 fully paid shares of NWL for around one million. I will let you know as soon as possible the result." This does not sound like a letter written to a man who has just defaulted in a firm commitment. The only complaint in that letter is that the Chateau Lacombe were complaining because Jaasma had failed to pay a \$2,500.00 account!

203. The complaint against Ropchan was that he had failed to live up to commitments made. This has already been thoroughly gone through in earlier remarks.

204. He says that he has lost everything that he ever had, leaving the impression that this was a great deal. But there is no evidence to support this.

205. The evidence of Mr. Geddes, who went over the

records carefully at my request, is that he cannot find any record of any significant investment in any of these enterprises by Jaasma. See the evidence of Mr. Geddes and his report, which is marked as an exhibit in his testimony.

206. This has already been discussed at some length and I refer particularly to the evidence of Mr. Simmonds and Mr. Rutkowski. But the best example I can give of this is a letter Jaasma wrote on January 18, 1971, being Document 19 in Ex. 119. In the course of this letter he complains about shabby treatment he has received from a local Edmonton hotel and he adds, "I think it is a disgrace in view of the business we have given them over the last year in the amount of \$20,000.00 to \$30,000.00!" This is indeed sumptuous living.

207. While these remarks may be more generally applicable, they certainly are applicable to Mr. Mohana, Mr. Oaks, and Mr. Sieben.

208. Mr. Sieben, for example, had been an employee of this firm for many years and had been aware of some of the earlier transactions which gave rise to some doubt as to the reliability of Mr. Jaasma. Mr. Oaks had been

warned by Mr. McKinnon of the dangers of the method of selling employed in respect of the equity fund plan for which he was responsible (see the memo of June 11, 1969 in Ex. 335). Mr. Simmonds in his testimony acknowledges that he knew exactly what was going on and complains that the Securities Commission should have asked him and they could have found out the whole story. This is the same man who caused a complaint to be made to the Securities Commission about the fact that it was investigating Cosmopolitan (Ex. 262).

209. Mr. Ferris had agreed to advance \$200,000.00 to PAP and arranged for an interim loan from his bank to be advanced to PAP and to be repaid from a mortgage loan. He left it with PAP to repay the bank from the mortgage proceeds when he went on vacation, and when he returned he discovered that they had not, and he was out of pocket \$400,000.00 instead of \$200,000.00. By the fall of 1970 he was complaining about this and several directors in their testimony acknowledged that they were aware of the nature of his complaints.

210. It should be noted that several directors resigned, but they did not organize any oust Jaasma movement.

211. Mr. Ferris (p. 2030). When asked to comment on this, Dr. McCrimmon says that there is quite a bit of truth in that (p. 2174).
212. See, by way of example, the evidence of Mr. Spinney, and the evidence of Mr. Richter regarding the Bjelke transaction.
213. I am referring to his statement, perhaps aprocryphal, that "There is one born every minute", and not to another statement sometimes attributed to him, to wit, "Never give a sucker an even break".
214. Many people consider bankers as fulfilling this role in society. Yet, The Canadian Imperial Bank of Commerce made arrangements with PAP Holdings Ltd. to make loans to persons who wished to be investors in PAP, and processed nineteen such applications for a total borrowing of \$159,800.00 (Ex. 294, Document 5). It would not appear that the bank understood that its role in this respect was that of an advisor, and apparently has not accepted any legal liability as an advisor.

APPENDIX C

A LIST OF EXHIBITS AND SUBMISSIONS RECEIVED BY THE INQUIRY

LIST OF EXHIBITS

VOLUME I

November 19, 1973

<u>No.</u>	<u>Description</u>	<u>Page</u>
1	Advertisements as Described	3

LIST OF EXHIBITSVOLUME IINovember 20, 1973

<u>No.</u>	<u>Description</u>	<u>Page</u>
2	Xerox copy of cheque dated August 26, 1970 ...	110
3	Xerox copy of cheque dated November 17, 1970 .	110
4	Agreement dated March 9, 1971	113
5	Agreement dated March 9th	116
6	Letter	119
7	Letter	120
8	Contract made between R.R.D. and Canamera dated July 7, 1970	127
9	Document supplemental to Exhibit Number 8 ...	128
10	Document dated the Blank Day of February, 1971.	130
11	Canamera Balance Sheet	182
12	P.A.P. Holdings Balance Sheet	182
13	Document dated March 3, 1971	191

LIST OF EXHIBITSVOLUME IIINovember 21, 1973.

<u>No.</u>	<u>Description</u>	<u>Page</u>
14	Document	234
15	First Page	252
16	B.C. Commission Approval	254
17	Alberta Commission Approval	254
18	Ontario Commission Approval	254
19	British Columbia Withdrawal of Consent ...	254
20	Alberta Withdrawal of Consent	254
21	Ontario Withdrawal of Consent	254
22	Financial Statement of Cosmopolitan Life as at December 31, 1969	276

LIST OF EXHIBITSVOLUME IVNovember 22, 1973

<u>No.</u>	<u>Description</u>	<u>Page</u>
23	Offer	298
24	Letter	298
25	Letter of July 29th	298
26	Letter of August 15th	298
27	Offer dated 27th October, 1970	300
28	Offer dated 25th April 1972	300
29	Affidavit and Attachments	301
30	Document dated February 24, 1966 ...	302
31	Document <i>(agreement as Reproduced)</i>	311
32	Writ and Order dated June 1970 and June 14, 1971	329
33	Newspaper clippings	331
34	Annual Report of Columbia Beneficial Holdings as at December 31, 1969	359
35	Memorandum	372

LIST OF EXHIBITSVOLUME VNovember 23, 1973

<u>No.</u>	<u>Description</u>	<u>Page</u>
36	Document - Direction from Chief Provincial Judge Rolf	387
37	Series of Certified copies from the Registrar of Companies (PA)	393
38	Financial Holdings Ltd. Incorporating Documents ...	396
39	Incorporating Documents of Sioux Holdings Limited ..	398
40	Incorporating Documents of Rocky Holdings Limited ...	400
41	Incorporating Documents of Cosmo-West Securities Limited	403
42	Incorporated Documents of Sioux Investments Limited .	405
43	Incorporating Documents of Canamera Enterprises Limited	405
44	Incorporating Documents of Canamera Insurance Services Ltd.	406
45	Certificate of Incorporation together with Articles of N.W.L. Financial Corporation Ltd.	407
46	Incorporating Documents of Balmoral Developments Ltd.	407
47	Minute Book of P.A.P. Holdings Ltd. and Sioux Holdings Ltd.	440
48	Minute Book of Canamera Enterprises Ltd.	441
	Minute Book Number 2 of Canamera Enterprises Ltd. marked as part of Exhibit 48	441
49	Minute Book of Rocky Holdings Ltd.	441
50	General Ledger of P.A.P. Holdings Ltd.	441
51	General Ledger of Sioux Holdings Ltd.	442

LIST OF EXHIBITS
(Continued)

VOLUME V

November 23, 1973

<u>No.</u>	<u>Description</u>	<u>Page</u>
52	General Ledger of Canamera Enterprises Ltd.	442
53	Synoptic for Sioux Holdings Ltd.	442
54	Two Hard Bound Books being Synoptics for P.A.P. Holdings Ltd.	442
55	Synoptic for Canamera Enterprises Ltd.	443
56	Minute Book of P.A.P. Holdings Ltd.	444
57	Transfer Sheets of P.A.P. Holdings Ltd.	444
58	Volume I - Ledger, P.A.P. Shareholders	445
59	Volume 2 - Ledger, P.A.P. Shareholders	445
60	Volume 3 - Ledger, P.A.P. Shareholders	445
61	Book entitled "Debts"	445
62	Book entitled "P.A.P. Investments"	445
63	Book entitled "Canamera Enterprises Shareholders" ..	446
64	Book entitled "Sioux Holdings Shareholders, Investments and Debts"	447
65	Schedule of Administrative Expenses dated December 31, 1970	458
66	Bundle of Documents	459
67	Resolution of P.A.P.	461
68	Resolution of Sioux	461
69	Series of Documents	462
70	Document	462
71	Copy of Minutes	463
72	Minute as Described	464

LIST OF EXHIBITS (Continued)VOLUME VNovember 23, 1973

<u>No.</u>	<u>Description</u>	<u>Page</u>
73	Document <i>List of Shareholders</i>	466
74	List of Shareholders	466
75	Two Letters to Canamera	466
76	Group of Letters	467
77	Agreement	468
78	Series of Documents	468
79	Document	470
80	Document	470
81	Series of Documents	471
82	Memorandum	472
83	Bonus Agreement	472

LIST OF EXHIBITSVOLUME VINovember 26, 1973

<u>No.</u>	<u>Description</u>	<u>Page</u>
84	Photocopy of Two Pages of Cosmopolitan Life Assurance Company Contract with Policyholders	530
85	Withdrawal, dated December 28th, 1970, in the amount of \$65,000	535
86	Agreement dated October 26th, 1970 between Cosmopolitan Life Assurance Company and North West Trust Company	541

LIST OF EXHIBITSVOLUME VII

<u>No.</u>	<u>Description</u>	<u>Page</u>
87	Resume	596
88	Resolution of the Board of Directors of P.A.P. ...	603
89	Bank of Commerce Document dated April 7, 1971	616
91	Letter Dated July 24th, 1970 to Allarco from Van Rhyn	639
92	Letter Dated November 18th, 1970. Letter Dated November 25th, 1970 together with Answering Letter dated November 27th, 1970. Promissory Note	642
93	Letter	649

LIST OF EXHIBITSVOLUME VIIINovember 28, 1973

<u>No.</u>	<u>Description</u>	<u>Page</u>
94	Memorandum and Articles of Columbia Beneficial Holdings Ltd.	668
95	Memorandum and Articles of Seaboard Life Insurance Company	668
96	A.R. Receipt signed by Mr. Hinman	669
97	Cosmo-West File	687
98	Fremar File	687
99	P.A.P. Holdings File	689
100	Seaboard's File	689
101	Annual Reports of Cosmopolitan 1963 to 1971..	697
102	Report	709
103	Milliman and Robertson letter	709
104	Memo -dated March 23, 1971	720
105 to 116	Excerpts from Cosmopolitan Files for the years 1961 to 1972 inclusive	733

LIST OF EXHIBITSVOLUME IXNovember 29, 1973

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117	Schedule	764
118	Minutes of Directors' Meeting dated October 25, 1970	767
119	Documents number 1 - 29 inclusive	774
120	Memo of S.A. Friedman to Fisher, August 18, 1971	775
121	Three volumes of Documents as described	784
122	Annual Report	787
123	Petition, various documents and memos from the office of The Insurance Branch	797
124	Letter	819
125	Portion of newspaper	830

LIST OF EXHIBITSVOLUME XNovember 30, 1973

<u>No.</u>	<u>Description</u>	<u>Page</u>
126	Executed copy of Exhibit 118	877
127	Letter dated October 22, 1970	904
128	Letter of October 28, 1970	907
129	Dezward File	933
130	Letter to Cosmopolitan dated April 20, 1970. Letter to McKinnon dated June 12, 1970 ..	935

LIST OF EXHIBITSVOLUME 11February 4, 1974

<u>No.</u>	<u>Description</u>	<u>Page</u>
131	Transfer of Land	1003
132	Certificate of Incorporation and other Documents Re Specialty Metal Craft ..	1004
133	Documents concerning Sale of Specialty Metal Craft to Stony Plain Road Developments (Six Documents)	1009
134	Group of Cheques	1017
135	A Bundle of Documents	1022
136	Transfer	1022
137	Letter Dated November 3, 1969	1023
138	Valuation of P.A.P.,Cosmopolitan and Sioux in 1968	1033

LIST OF EXHIBITSVOLUME 12FEBRUARY 5, 1974

<u>No.</u>	<u>Description</u>	<u>Page</u>
139	Royal Bank Document, Granville and Davies Re Cosmopolitan Shares	1060
140	Cheque dated December 19, 1970	1065
141	Letter dated July 27, 1970	1069
142	Letter dated February 24, 1972	1070
143	Photostat copy of Document	1071
144	Bank certified copy of document entitled Resolution	1081
145	Bank Certified copy of Document re Officers	1082

LIST OF EXHIBITSVOLUME 13FEBRUARY 6, 1974

<u>No.</u>	<u>Description</u>	<u>Page</u>
146	Dr. Lampard's Resignations	1142
147	Minutes of Meetings of Directors of P.A.P. Holdings held on June 1, 1970 and on June 4, 1970	1182
148	Agreement between Slater Walker RRD, Canamera and Attachments	1195

LIST OF EXHIBITSVOLUME 14FEBRUARY 7, 1974

<u>No.</u>	<u>Description</u>	<u>Page</u>
149	Letter dated January 7, 1971	1238
150	Letter addressed to Dr. J. A. Lampard dated November 27, 1969	1246
151	Minutes of Meeting of March 18	1257
152	Resolution of Directors Approving RRD Transaction signed by Sklar	1258
153	Memo dated November 21, 1967	1290

LIST OF EXHIBITSVOLUME 15February 12, 1974.

<u>No.</u>	<u>Description</u>	<u>Page</u>
154	Affidavit	1297
155	Affidavit of George Berge	1298
156	Affidavit of David Elrix	1298
157	Letter as Described	1298
158	Letter as Described	1299
159	List of Complaints	1302
160	Affidavit of Mr. Arnell	1303
161	Letters with Annual Reports	1316
162	Prospectus of Allarco	1316
163	Schedules and Formal Agreement between Seaboard Life and Professional Investors Life	1321
164	Two Letters	1324
165	Memo dated April 30, 1970	1330
166	Letter as Described	1331
167	Documents headed Seaboard Accounting Regular Business January 1 to June 30, 1970 and Seaboard Interoffice Memorandum dated September 11, 1970	1357
168	Two agreements the effective date of one January 1 1967, the effective date of the other July 1 1968	1359
169	Letter as Described	1367

LIST OF EXHIBITS (Continued)VOLUME 15February 12, 1974

<u>No.</u>	<u>Description</u>	<u>Page</u>
170	Copy of Letter dated January 18, 1971	1383
171	Letter from Canadian Imperial Bank of Commerce dated February 16, 1971	1387

LIST OF EXHIBITSVOLUME 16February 13, 1974

<u>No.</u>	<u>Description</u>	<u>Page</u>
172	Minutes of a Meeting, Letters and Documents	1398
173	Certifications for Peter G. Van Rhyn and Peter G. Van Rhyn and Associates	1409
174	Letter from Seaboard to Messrs. Steffanson and G. A. Sieben, dated April 10, 1973	1412
175	Copy of a letter dated January 18, 1971	1419
176	Document relating to the Equity Based Plan	1420
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210	Letter dated January 3, 1973 to the Canadian Imperial Bank of Commerce at 10431 - 82 Avenue ..	1959
211	A Statement entitled D.J. Oaks "In Trust" for Sales Managers ..	1960

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216	Letter of June 30 and Agreement of July 15	2001
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APPENDIX D - LIST OF WITNESSES AT THE PUBLIC HEARING

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Date Due

~~JUL 9 '75~~

~~DOT 80 78~~

~~FEB 5 1991~~

~~FEB 7 1964~~

MAY - 8 1989

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